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Chair

Mr. Blaine Calkins

Subcommittee on Bill C-38 (Part III) of the Standing Committee on Finance

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● (1835)

[*English*]

The Chair (Mr. Blaine Calkins (Wetaskiwin, CPC)): Good evening, ladies and gentlemen.

We are starting a few minutes late already, in a very lengthy committee meeting, so I would like to call witnesses and members of the committee to order right now.

This is meeting number 4 of the Subcommittee on Bill C-38 of the Standing Committee on Finance.

Mr. Anderson has a point of order, but just let me finish introducing the meeting.

This is our fourth meeting, and our witnesses today are Mr. Jake Irving, from the Canadian Hydropower Association; the Honourable Tom Siddon, former Minister of Fisheries and Oceans; and Pam Schwann from the Saskatchewan Mining Association. From Nature Québec, we have Mr. Christian Simard, and we don't know where he is right now. We also have, from the Department of Aboriginal Affairs and Northern Development, Mr. Jean-François Tremblay, senior assistant deputy minister.

Mr. Anderson.

Mr. David Anderson (Cypress Hills—Grasslands, CPC): Mr. Chair, I would like a bit of clarification from the NDP on one point. When we started having these meetings, we heard from them numerous times that they wanted to make sure we had adequate hearings, and we booked 18 hours of hearings for all of us to get more information about this part of the budget bill. But I notice that Mr. Julian and Ms. Leslie are both gone—the lead critic for Natural Resources and the lead critic for Environment.

We've accommodated them with these hours. I understand the importance of them going to Alberta and trying to limit the political damage out there, but I want to know—I guess I should point out as well that I think the member for Edmonton—Strathcona was supposed to accompany them and chose not to, perhaps out of embarrassment—if the NDP are interested in having these meetings carry through until tomorrow night, or whether they feel we've had adequate hearings and maybe they want to cut back tomorrow night.

Could Mr. Chisholm answer that question?

The Chair: I don't hear a point of order there.

Mr. David Anderson: It's just a point of clarification.

The Chair: Mr. Anderson, there are four members from the New Democratic Party here, two of whom have substituted in for the regular members of this subcommittee. I don't really see any point of order here.

Mr. Chisholm, did you want to respond to that?

Mr. Robert Chisholm (Dartmouth—Cole Harbour, NDP): Well, I agree, Mr. Chairman. I appreciate the fact that you've acknowledged it wasn't a point of order, and I think Mr. Anderson certainly knew that well. It was an attempt to make mischief; some would call it cheap political points.

Nonetheless, we have four members of our committee here who are ready to go, to make the best use of the limited time we have to deal with a bill that changes 70 pieces of legislation—unprecedented in the history of this Parliament.

We're here to do our jobs, as parliamentarians, and I hope that, at the end of tonight and at the end of this limited period of time, Mr. Anderson will also feel he has been able to make good use of his time.

The Chair: Thank you, Mr. Chisholm. I appreciate that clarification.

My understanding from the clerk is that the proper substitutions have been made. We have a full contingent of committee members here tonight. I see no reason in continuing down this line, when we have witnesses here from across our country bringing testimony to this committee.

The way I've been doing this, for those of you at the witness end of the table...you will find that we have members of the committee. We do everything here in both official languages. You have an earpiece. Is there anybody who is not familiar? I think everybody here is familiar with how this process works. We will proceed in that way.

I've been given to understand that Mr. Simard will be here at approximately 7:30 p.m. At that point in time, we will have to stop, if we're in a round of questioning, and allow Mr. Simard to make his presentation, and then we'll resume with the questioning at that particular point in time. That's the best we can do to accommodate Mr. Simard's schedule.

Without further ado, Mr. Irving, you have up to 10 minutes.

When you're making your presentations, please keep an eye on the chair. I will be giving you notice of when you have two minutes and one minute remaining. We try to keep a very tight timeline.

Please proceed, sir.

[*Translation*]

Mr. Jacob Irving (President, Canadian Hydropower Association): Thank you, Mr. Chair.

My name is Jacob Irving, and I am the President of the Canadian Hydropower Association. Joining me is Ed Wojczynski of Manitoba Hydro, the chair of our association's board of directors.

[*English*]

The CHA is the national voice for hydro power in Canada. We represent generators, manufacturers, engineering firms, consultants, and construction companies.

Sixty per cent of our electricity is hydro power. Canada is the third largest producer in the world. This makes our electricity system one of the cleanest and most renewable anywhere. As big as we are, we could still more than double our current hydro power capacity, and that potential is spread across every region of the country. It is truly a national resource.

Through hydro power, Canadians have an outstanding opportunity to fight air pollution and climate change while securing our sustainable energy future. Today we'll focus on how Bill C-38 can contribute to that future.

Hydro power facilities can be small or large. Many can be very large indeed. For example, the January edition of *ReNew* magazine reported that four of the five largest infrastructure projects in Canada are hydro power projects.

According to a recent study we conducted with the University of Montreal, hydro power developers are contemplating investing more than $125 billion in Canada over the next 20 years. This new capacity would help satisfy domestic and export demand. The study estimates it would also create over a million new person-years of employment across the country.

To make these investments with confidence, the hydro power industry needs regulatory efficiency and predictability. Unfortunately, the current federal environmental assessment and authorization regime cannot adequately provide this. I believe you'll find that our message to you today is consistent with what we have been saying about regulatory reform for many years.

Our projects undergo federal EAs and must secure authorizations under other federal statutes, while at the same time dealing with provincial EAs. The result is duplication, delay, and uncertainty. This can discourage investors from supporting renewable electricity in Canada.

An important commercial advantage for hydro power is its very low operating cost. However, its upfront capital costs are relatively large. Hydro power investors are especially sensitive to delays and uncertainty because they must commit substantial capital well before revenues can be generated.

Please though, do not misread me or the CHA members. Environmental stewardship is a priority for our industry. We support a strong and robust EA process, and we support the protection of fish and the recovery of species at risk. We are not asking for a weakening of environmental protection. Hydro power has grown up alongside environmental regulation and environmental regulation has grown up alongside hydro power. Our extensive experience and long-term perspective make us want a healthy and effective regulatory process. This is good for the environment, our industry, and Canada.

We strongly believe that we must continuously work toward social acceptability in our activities. Our members strive to earn this acceptance through hard work with aboriginal and other communities. We also reach out to a wider range of stakeholders, including environmental groups. We start consulting long before any formal EA process begins.

We believe all stakeholders would benefit from an efficient, timely, predictable, and consistent federal EA and authorization regime that also works smoothly with provincial EA processes and environmental regulations.

Bill C-38 is helpful in addressing many of these issues.

At this point I would like to call on CHA chair Ed Wojczynski to continue our presentation.

● (1840)

Mr. Eduard Wojczynski (Chair, Board of Directors, Canadian Hydropower Association): The Canadian Hydropower Association welcomes the new Canadian Environmental Assessment Act. It will reduce federal-provincial overlap and duplication, which costs taxpayers, electricity ratepayers, and project proponents. Bill C-38 reforms will concentrate the federal process on areas of federal jurisdiction. They will put the emphasis on projects that are likely to have significant impacts. The process improvements should allow the system to comfortably accommodate the timelines proposed in CEAA 2012, and provide quality environmental assessments. Proponents will be able to dedicate resources to really solving priority environmental issues without being sidelined by process distractions that do not contribute to actual environmental outcomes.

I'd like to emphasize that predictability and timeliness in project review and authorization are critical to our industry. Currently, the approvals for major projects in Canada take about four years. Developers usually begin environmental studies many years before the official EA starts. This is too long for investments that are sensitive to market timing, especially in comparison to the shorter time to market for competing fossil fuel generation. Delays can have a significant impact on project economics. For example, even just a one-year delay in Manitoba Hydro's proposed $8 billion Conawapa generating station would result in a half a billion dollars in lost revenue. This represents a loss to Manitobans and a loss of export revenue to Canadians.

But the impacts of a faulty regulatory system can be even broader. They can lead to suboptimal choices both for the environment and the economy. Let me give you an example, again from my own company. Manitoba Hydro recently signed power purchase agreements with Minnesota and Wisconsin for future electricity delivery, and we need to invest over $15 billion to expand hydro facilities to meet the contract requirements, while also meeting Manitoba's growing domestic requirements.

We are a preferred supplier in the U.S. and elsewhere. Our electricity is clean, renewable, and reliable. We will act as a battery to support wind power in the mid-west of Canada and the U.S. Our hydro would displace thermal generation and reduce greenhouse gases and air pollution in North America. If the EA process runs more slowly than expected and we miss our contract deadlines, the contracts can be cancelled. Manitobans and Canadians would suffer significant economic losses.

Just as important, though, is that our customers would turn to U.S. coal or gas-fired generation to meet their needs. The advantages of reducing greenhouse gases and air pollution by using Canadian hydro power would be lost. The answer is not imposing new timelines on the old system. The current regime has problems of duplication, inefficiency, lack of focus, and lack of coordination. We believe that Bill C-38 addresses these fundamental challenges.

Bill C-38 also addresses other legislation important to us. The Canadian hydro power industry supports the protection of fish and fish habitat, but the Fisheries Act has been a source of frustration, especially regarding its undefined authorization processes and its tendency to overlap with provincial fish protection statutes and regulations.

DFO has imposed mitigation measures on hydro power developers that are sometimes disproportionate to the potential environmental improvements that are being sought. The proposed changes to the Fisheries Act offer better clarity and an ability to reduce duplication with provinces. The ultimate implications for hydro power will strongly depend, however, on regulations that are yet to be written. We believe that if sound regulations are adopted, both fish and the hydro power industry will benefit.

We are keen to be engaged in this important future work, in terms of the regulations. We are particularly encouraged that Bill C-38 addresses some major shortcomings in the third piece of legislation we're going to talk about, the Species at Risk Act. Currently, SARA has a five-year limit for an agreement, and a three-year limit for a permit concerning activities affecting listed species or their critical habitat. These limits are out of step with the needs of the hydro power industry, whose facilities operate for decades. In fact, behind this building, on the Ottawa River, lies the oldest hydro power facility in Canada, the Chaudière Falls generating facility, which is over 130 years old.

Clearly, three-year to five-year SARA authorizations are not workable for facilities that can take longer than five years to build and that can operate for more than a century. Any hydro power developer is going to be leery of proceeding with millions or billions of dollars in investments if the authorization expires before construction is even complete.

Bill C-38 allows for longer-term authorizations under SARA. This will be a big improvement, but more needs to be done to improve the act. For example, there is an opportunity for government to enable industry to focus its efforts on activities that more effectively conserve and enhance the population of species. The current act requires us to focus activities on a few individuals of that species instead. This improvement can be done by linking stewardship and conservation agreements with compliance in the act.

● (1845)

In summary, the Canadian Hydropower Association has pleaded for greater efficiency and predictability in the environmental regulatory process for years. Improvements to the regulatory system are clearly required. We see Bill C-38 positively addressing many of the regulatory problems. The proposed improvements will not adversely affect our industry's environmental performance; instead, they will encourage further investment in clean and renewable hydro power. This will help Canada reduce North American greenhouse gases and air pollution.

Thank you, Mr. Chair and committee members.

The Chair: Thank you, Mr. Wojczynski.

Mr. Siddon, you have up to 10 minutes, please, sir.

[*Translation*]

Hon. Thomas Siddon (As an Individual): Thank you, Mr. Chair.

It is a great honour for me to appear before your committee this evening. I have studied Bill C-38, and I have several comments to make.

[*English*]

I want to start by giving you a quick overview. As a young boy living a little south of you, along the Red Deer River, I was able to go, as my grandfather did, to fish in the Red Deer River around Drumheller. Anyone who knows that river nowadays knows that since the building of dams and with the rapid melt rate of the glaciers above Sundre, we are seeing the water quality severely altered, and fish have long since died in that part of the Red Deer River.

I always wondered why sewage plants were built downstream of communities, right up until the late seventies, without adequate sewage treatment. I worked in a chemical plant as a young engineering student and was urged to turn my back one night as the operating superintendent arranged to open some valves and dumped the heel of holding tanks into the North Saskatchewan River.

This is why I have a strong feeling and concern for what Bill C-38 proposes and purports to do to the federal Fisheries Act, which goes back to 1868. It's the oldest piece of federal legislation. It has 144 years of life behind it, and it does not need modernization after all those years. Perhaps its implementation and application could be modified and improved, but the problem is not with the act, as I will attempt to elaborate.

As an engineer, I'm in favour of mining. I was once the mines critic for the Progressive Conservative Party. I have often talked about the virtues of hydro power and pumped storage, which will come into its day in the future. But at the same time, we have lost more than 85% of the natural habitat to support our fish stocks across Canada, in inland waters and coastal waters. We've seen our stocks decline over the past century to historically low values. The reason for that is that we always did things the way we did them in order to get on with business and not worry too much about the downstream consequences. I think this bill, as I will elaborate in a few moments, has many dangerous elements to it from that perspective.

Having sat on the Okanagan Basin Water Board and chaired the stewardship council for seven years, I have learned that for every watershed, there is one water. So when we hear farmers or cottagers or others talking about doing whatever they wish with their drainage ditches or on their beachfronts, I say no, that's not the case. The riparian shoreline belongs to every British Columbian and every Canadian and has to be protected and preserved.

In 1976, the habitat provisions were introduced in the Fisheries Act in what were called sections 31 and 33, but it wasn't until 1986 that we brought in a policy that led to the regulatory regime under which those habitat provisions were administered. I have here the policy, the document I took to the Parliament of Canada on October 7, 1986, after extensive consultation with all of the interest groups across Canada—in Ontario, in Ottawa, in British Columbia, and in Atlantic Canada—both the proponents of major projects and the conservationists, wildlife authorities, and others.

This policy embodies three major principles. If you think about the decline and demise of our fish stocks, the first principle should strike you as being important: to provide a net gain of Canada's habitat for fish.

The second is that there should be no net loss of habitat arising from specific fish-related projects, which might in fact have consequences otherwise of killing fish—which, by the way, these new provisions of Bill C-38 permit, in the case of certain species.

The third and most important principle was that people should get together in an integrated co-management fashion. That, I would remind you, in 1986—25 years ago—was most uncommon. Governments did what governments wanted to do, and of course, they were often subjected to the influence and the power of money and jobs.

● (1850)

In 1986 we adopted this policy, the first in the world, and it's still significant and it still stands today. But with the passage of this bill, its impact and its import will be significantly reduced and diminished.

Experience taught me some hard-won lessons as Minister of Fisheries for Canada between 1985 and 1990. I had to preside over the demise of the Atlantic groundfish fishery, because the Kirby royal commission recommended a corporate fishery, which had no provision to prevent the destruction of the fish-bearing seabed off the coast of Newfoundland, and the scientists were wrong in suggesting that there were more fish when in fact there were declining stocks. Small cod stocks were being thrown over the side and high-graded, without regard for the fact that they took seven years to come to maturity and to reproduce.

In Prince Edward Island, we had a serious issue with contaminated shellfish in which people died because we didn't administer the shellfish aquaculture industry effectively when it came to the brackish lagoons around the coastline of Prince Edward Island. We created something called dinoflagellate populations, which essentially killed people.

We had the pulp mills of Canada all across Canada pouring the products of the kraft bleaching process, dioxins and furans, into waters throughout our interior and around our coasts, with the result that carcinogenic levels of dioxins and furans were found in the bottom-feeding fish, which were part of the overall food chain. That wasn't found out until Greenpeace sent water samples to Sweden, because Canada didn't have the capacity to discover those realities.

I had to deal with the fact of the populations of beluga whales in the St. Lawrence, which were once 20,000 when they met at the mouth of the Saguenay downstream from the Alcan smelter, dwindled to a few hundred because the females, who needed to be about 14 years of age to reproduce, had their ovaries destroyed by chemicals in the St. Lawrence River.

The consequence of intense fish farming...? After 25 years, the jury is still out on that one.

And the decline of Pacific salmon and steelhead stocks is always at the forefront of the concerns of British Columbians. Mudslides caused by indiscriminate logging practices and sometimes mining operations have to be considered. In a moment I'll tell you why I think this bill is not going to provide adequate protection for that.

You can't always put fisheries science into a neat little box or a straitjacket of time limitation, as in part of this bill—proposed sections 52 to, I think, 131 or 129. With the new CEAA provision, you're going to fast-track everything, put it in a neat little time-limited box, but this has no regard for some of the complexities that as fisheries minister I had to deal with. I had to deal with hundreds of angry fishermen who had their fisheries closed. The Atlantic cod stock collapse led to an industry being virtually closed for now more than a quarter of a century, because we didn't have the foresight or the knowledge at that time to do it right.

When we were a Conservative government, we brought in the first and only green plan for Canada's environment. We brought in an environmental protection strategy—the Canadian Environmental Assessment Act, which is now being totally replaced; the Canadian Environmental Protection Act; and the Arctic environmental protection strategy.

Did you know that the breast milk of Inuit women in the Arctic is loaded with industrial chemicals from the south because we have not learned that it goes through the atmosphere into the Arctic food chain, into the fatty tissue of marine animals, and Inuit women drink it, and their health is impaired as a result of it?

This is why we have a Fisheries Act with teeth in it. I am very alarmed by the provisions of Bill C-38, which will erode all of the provisions of 144 years of history.

In questioning, I will tell you specifically—clause by clause, if you ask me—what I feel is defective in this bill. But I'm here to express my concern that Bill C-38 makes a Swiss cheese out of the federal Fisheries Act.

My concerns are shared by numerous other former ministers of fisheries, including the three others who, with me, signed a letter to the Prime Minister two days ago. It's shared by hundreds of fisheries scientists and biologists and thousands of conservation-minded Canadians.

● (1855)

I think government members and this committee should give careful and thorough consideration to that, and I'll deal with specifics later if we have an opportunity, Mr. Chairman.

Merci beaucoup.

The Chair: Thank you very much, Mr. Siddon.

Ms. Schwann, you have up to 10 minutes, please.

Ms. Pamela Schwann (Executive Director, Saskatchewan Mining Association): *Bonjour*, Mr. Chairman, members of the public and committee members.

I'm here today to speak on behalf of the Saskatchewan Mining Association.

First, thank you very much for the opportunity to appear before the committee in consideration of part 3, “Responsible Resource Development”, in Bill C-38.

I understand the focus tonight will be on reducing duplication of jurisdictions and timelines.

I'd like to start by emphasizing that our comments tonight are based on a preliminary analysis of the legislation. Further, from our experience we know that the effect of the proposed changes will depend not only on the details of the regulations and policies that we have not yet seen, but also on the implementation of those changes across Canada. We welcome the opportunity to fully participate in the development of these regulations and to have an ongoing open dialogue to ensure that the comprehensive reform required to achieve the government's goal of “one project, one review” in a clearly defined time period is realized in the implementation stages.

EAs are planning tools for projects that, if approved, will have other provincial and federal oversight as they go into operation, as has already been mentioned. With respect to the new Canadian Environmental Assessment Act, we were before the House of Commons committee late last year as part of the review of the current act, advocating for common-sense reform.

In particular, we advanced a number of different concepts embodied by this legislation. These include rationalizing project triggers so that administrative or routine decisions do not require an EA; respecting the principle of “one project, one process”, with a view to better use of equivalency between federal and provincial EA processes, thereby eliminating multiple EAs; and establishing timelines for EAs. In these three respects, we are of the view that the new CEAA holds a promise of additional improvements and clarity and predictability, as well as the promise of reducing duplication of process while not weakening the overall protection of the environment afforded by the current paradigm.

More specifically, we see the designated projects approach as a means to ensure that EAs are required where appropriate. The role of equivalency has been enhanced and provides the potential for provinces' EA processes to lead and reduce the duplication of federal and provincial reviews.

To facilitate the use of the equivalency provisions, it is critical that the mechanics of the process be certain and clear. Certainly, Saskatchewan's environmental regulatory regime is robust and mature, and on an outcome basis could be fully substituted for the federal EA process, particularly in sectors where the provincial government has recognized expertise.

Lastly—establish cycle times for EAs to improve the predictability and timeliness of the review—the SMA is optimistic that the proposed amendments could increase the efficiency and the effectiveness of Canada's regulatory system. We are very eager to work with the federal government to realize the potential benefits as they move forward in implementing the many amendments across all industries. Again, as already mentioned, the test will be in the details of the regulations that we haven't seen yet and how the legislation is interpreted and applied in practice.

For example, the development of a designated projects list is key to how efficient and predictable the new CEAA will be. We had previously submitted that only those activities or undertakings that would trigger a federal permit and that are not bounded by a current licence should be subject to an EA. We want to ensure that the scope of the new CEAA process does not expand so as to have unintended consequences, such that new projects or modifications to existing projects that previously would not have been subject to a federal EA end up being included in the designated project list.

I would like to speak to one comment we had provided that was included within our previous submission, but was not enacted upon within the positive reforms that we've seen to date—the extension of the positive reforms to projects primarily regulated by the CNSC.

For example, we were disappointed to learn that the federal-provincial equivalency and full substitution will not be made available to uranium mining projects under the new Canadian Environmental Assessment Act. Further, as currently drafted, the timelines specified in the act do not apply to the projects that have federal EAs led by the CNSC, although we were very pleased to read the comments provided by the CNSC yesterday to this committee about introducing new regulations with defined timelines for rendering a decision for a licence to prepare a site and construct a uranium mine.

Last year, the Australian government reviewed and approved the coordinated federal- and state-level EA for what will be the world's largest uranium-producing mine, the expanded Olympic Dam deposit, in less than one year.

● (1900)

When you compare that to the more than seven years required in the latest EA to bring a new uranium mine into production in Saskatchewan, it's obvious that it is far more attractive for companies to invest in uranium projects outside of Canada that have similar environment and safety standards, but where there is a more timely return on investments. In the interest of fairness, we hope that our uranium mining members will see the same benefits that have been afforded to other mining sectors.

At this point, we are not advanced in our comments with changes to the Fisheries Act. The incorporation of means for better federal and provincial cooperation is valuable, as is the incorporation of a larger tool box for dealing with the act's absolute prohibitions, such as the possibility of regulations for proposed section 35. However, at this time, we are not clear how certain provisions of the act will work together in practice. In particular, we are concerned with the differences in wording between proposed sections 35 and 36, and the challenges this will present. We support the definition of fishery as applying to commercial, subsistence for aboriginals, and recreational fisheries. However, this is not carried through into proposed section 36. We hope to work with officials to develop greater clarity through regulations and guidance. We are hopeful that habitat banking can be part of the approach to conserve Canada's fisheries, while allowing sustainable development to continue.

With respect to SARA, the proposed changes are positive, but certainly more work needs to be done to have effective and realistic legislation. We commend the government for moving forward in recognizing that changes to SARA are required.

To summarize, I want to thank the federal government for recognizing that the existing federal environmental assessment system needed comprehensive reform, and for bringing forward legislation to implement system-wide improvements to achieve the goal of “one project, one review”, in a clearly defined time period, while upholding the pillar of environmental protection.

In closing, we are advocates for a regulatory system that reduces overlap and duplication, establishes clear timelines, and concentrates on areas where potential environmental impacts are the greatest, while ensuring that the environment is protected. My colleagues and I would welcome any questions that you have.

Thank you.

● (1905)

The Chair: Thank you very much, Ms. Schwann.

Now we have Mr. Tremblay for five minutes, please.

[*Translation*]

Mr. Jean-François Tremblay (Senior Assistant Deputy Minister, Treaties and Aboriginal Government, Department of Indian Affairs and Northern Development): Mr. Chair, distinguished members of the subcommittee,

[*English*]

I would like to thank the committee for giving me this opportunity to provide you with opening remarks on aboriginal consultation and accommodation.

[*Translation*]

The Government of Canada consults Canadians on issues of interest and concern for them. Consultation is an important part of good governance, relevant policy development and informed decision-making.

In addition to those good governance objectives, the government also has an obligation to consult aboriginal groups when it comes to its common law obligations.

[*English*]

As stated by the Supreme Court of Canada in the Haida Taku River decisions in 2004, the Crown has a legal duty to consult, and if appropriate, accommodate, when contemplating conduct that might adversely impact potential or established section 35 or treaty rights. It's important also to take into account that this duty to consult applied to the Crown, which in this case means that it applies to the federal, provincial, and territorial governments.

In this context, individual government departments have to assess how their contemplated activities may adversely impact potential or established aboriginal or treaty rights, and who should be participating in the consultation. Government departments can, where appropriate, use and rely on existing mechanisms, such as environmental assessments or regulatory approval processes to gather relevant information and address aboriginal issues.

At Aboriginal Affairs and Northern Development Canada, our role is to provide support and tools to government departments and agencies to assist them in fulfilling their consultation obligation. For this purpose, the department established a consultation and accommodation unit and has undertaken the following activities.

We have engaged with aboriginal groups—more than 65 aboriginal groups in provinces, industries, and companies. We launched an aboriginal treaty rights information system for federal officials to better identify the location of aboriginal and treaty rights. We released guidelines, interim guidelines, in 2008, and new interim guidelines in 2011. We trained over and above around 2,000 federal officials. We took steps to better integrate consultation into government day-to-day activities.

Building on these achievements, the responsible resource development is further enhancing the consultation activities with aboriginal groups through different elements. First, we are integrating aboriginal consultation into the new environmental assessment and regulatory process. This will be supported for each major project review by designating a lead department or agency, and a single Crown consultation coordinator to facilitate the relationship with first nations.

Second, we are providing funding specifically to support consultations with aboriginal groups to ensure their rights and interests are respected, as indicated in budget 2012.

Third, we are negotiating consultation protocols and agreements with aboriginal groups to establish, more clearly, the expectations and level of consultation that should be established. This will help to address the concerns of aboriginal groups about duplication of processes resulting in consultation fatigue.

Fourth, we are negotiating a memorandum of understanding with the provinces and territories to align federal and provincial territorial processes to improve involvement of aboriginal people.

[*Translation*]

In closing, I believe that these measures will ensure that aboriginal groups participate—from beginning to end—in environmental assessment and regulatory licence issuance processes, and that their potential or established ancestral rights from treaties are taken into consideration more when decisions are being made.

Thank you.

[*English*]

The Chair: Thank you very much, Mr. Tremblay.

Mr. Simard, you have just arrived. Thank you so much for making a great effort to come here. Are you prepared, sir, to give your opening remarks? You just arrived.

[*Translation*]

Mr. Christian Simard (Executive Director, Nature Québec): Yes, Mr. Chair, I am ready.

The Chair: Thank you, Mr. Simard. You have 10 minutes.

● (1910)

Mr. Christian Simard: On behalf of Nature Québec, I want to thank the members of the Subcommittee on Bill C-38 for having me this evening. I will make my presentation in French.

Nature Québec is a non-profit organization that brings together individuals and 120 conservation organizations from across Quebec. So we have several thousand members and supporters who work on protecting the environment and promoting sustainable development.

Nature Québec works on maintaining species and ecosystem diversity. Since 1981, our organization has been committed to the objectives of the World Conservation Strategy of the International Union for Conservation of Nature, or IUCN. Our objectives are to maintain essential ecological processes and life support systems, to preserve genetic diversity and to ensure the sustainable development and utilization of resources and ecosystems.

Nature Québec is an active member of several coalitions, including the St. Lawrence Coalition, an interprovincial coalition that was created to convince government institutions to urgently put a moratorium on gas and oil exploration and development in the Gulf of St. Lawrence, until such a time as a full environmental assessment is conducted on the impacts of that industry.

Like others before us, we want to reiterate that the use of a budget implementation bill that amends 69 pieces of legislation and transforms Canada's environmental protection economy—including 19 pieces of legislation or areas of activity that are affected at that level alone—is a perversion of democracy, and at the very least a lack of respect for parliamentary institutions.

It is totally unacceptable that the Standing Committee on Environment and Sustainable Development—on which I sat between 2004 and 2006 as a member for Beauport—Limoilou—was not asked to hold a thorough debate and broad consultations on the legislative provisions that are directly related to and will directly affect environmental protection in Canada. I must admit that we fully agreed with the recommendation made by Ecojustice, which appeared yesterday or the day before, asking that the bill be divided, so that at least part 3 would be subject to a specific piece of legislation that could be thoroughly debated. The bill was drafted quickly, with provisions that apply both retroactively and immediately, and some provisions we are not familiar with that will apply pending a cabinet decision later on. Part 3 of the bill is worthy of special treatment and should be debated thoroughly.

When I was an MP, I remember having agreements with the Conservative Party, more specifically regarding Bill C-15, An Act to amend the Migratory Birds Convention Act, 1994 and the Canadian Environmental Protection Act, 1999. We obtained a fairly special amendment that helped protect migratory birds from oil spills. I would like to see that Conservative Party again. By passing that bill, they made some progress in terms of the environment in Canada.

Through various measures, Bill C-38 directly violates the principle of non-regression in environmental law, a principle that will be debated and perhaps adopted in Rio. That principle was adopted at the third international meeting of environmental law experts and associations in Limoges, in 2011. It says the following:

> To prevent any regression in environmental protection, the states must, in the common interest of humanity, recognize and establish the non-regression principle. To do so, the states must take the necessary steps to guarantee that no measures shall reduce the level of environmental protection achieved thus far.

I will talk about hydrocarbon development and the concrete impact Bill C-38 will have in terms of that. Pursuant to provisions retroactive to July 1, 2010, Bill C-38 sows confusion in the ongoing assessment process in the Gulf of St. Lawrence and opens the door to oil development without proper environmental assessment. The Canada-Newfoundland and Labrador Offshore Petroleum Our understanding is that the board's role as the responsible authority for environmental assessment was taken away, retroactive to July 1, 2010.

What is happening with the ongoing screening process? Who will take over? Will it be the National Energy Board, which is one of the three recognized authorities, along with the Canadian Environmental Assessment Agency and the Canadian Nuclear Safety Commission? The board will have 45 days to determine whether a more in-depth environmental assessment is necessary.

● (1915)

I want to remind you that only three responsible authorities will now be recognized—the Canadian Environmental Assessment Agency, the National Energy Board and the Canadian Nuclear Safety Commission. However, two of the biggest recent environmental disasters—the Gulf of Mexico oil spill and the Fukushima nuclear disaster—tell us that there must be independent alternatives to such regulatory agencies as the NEB and the Canadian Nuclear Safety Commission, which are often too close to industry interests to do credible work in terms of environmental protection.

I want to remind you that the value of fish landings in the Gulf of St. Lawrence is $500 million a year, and the total value amounts to $1.5 billion if we take processing into account. That is a real treasure trove, which is already available, while the hope in hydrocarbons is still only potential.

Allowing oil exploration without a full environmental assessment guarantee would be totally irresponsible. You will recall that recent disasters in the Gulf of Mexico and the North Sea happened during the exploration stage.

How much time do I have left, Mr. Chair?

[*English*]

The Chair: You have three minutes.

[*Translation*]

Mr. Christian Simard: Under the new environmental assessment provisions, environmental impacts will be limited to the impacts on fish, aquatic species protected by the legislation, and migratory birds —with the exception of federal land. That scope is extremely limited and will allow for a laisser-faire approach and a lack of assessment, which may have a major impact on future projects and environmental protection.

Much has been said about the Fisheries Act. Provisions on fish habitat will be amended so as to protect only fish that is important to trade, aboriginals or recreational fishing. The provisions of Bill C-38 radically reduce the notion of habitat protection.

Nature Québec fully agrees with the letter 650 Canadian scientists sent to Prime Minister Harper to complain about the amendments to the Fisheries Act. They define habitat as "the aquatic and/or terrestrial environment necessary to the survival of all species, including fish. All species, including humans, depend on healthy habitats".

Therefore, protection cannot be limited to certain habitats or certain types of fish. Doing that would distort everything we refer to as ecosystems and the protection of the environment. Wildlife habitats, already poorly protected, will lose virtually all protection. The focus will be placed on certain species that are dependent on a quality habitat.

I would like to conclude my remarks by saying that our ecological footprint on the planet is already very large. Development can no longer be done like it used to. We must absolutely ensure the durability of ecosystems and cannot pit economic development against environmental protection, as this bill seems to be doing. It provides for many systems that function by exception, geographic exceptions. Certain zones, certain activities, such as road and mine construction, could be removed from the Fisheries Act.

As you know, there is already an exception in the Metal Mining Liquid Effluent Regulations that makes it possible to not comply with the Fisheries Act. That led to the transformation of natural lakes into tailing ponds. That's one small exception whose meaning was corrupted in reality. With the way things stand, how many natural lakes or rivers will be used for roads, without assessment, without examination, without protection, to eventually be made into tailing ponds?

There are bogs in northern Quebec and Canada, and some wetlands are not necessarily suitable for fishing but are essential for ecosystems. So it is extremely important to not create this type of discretionary exception system. That is why Nature Québec is in favour of major change and the removal of those bill provisions on budget application.

Thank you.

[*English*]

The Chair: Thank you very much, Mr. Simard.

Ladies and gentlemen, we will now proceed with our first round of questioning. These are seven-minute questions and answers. We will start with Mr. Kamp.

● (1920)

Mr. Randy Kamp (Pitt Meadows—Maple Ridge—Mission, CPC): Thank you, Mr. Chair, and thank you to the witnesses for taking the time to come here. I know some of you have come from a long way, and it's always good to welcome a fellow British Columbian in the case of Mr. Siddon.

I want to begin with asking you a few questions. I have been around the Fisheries Department for several years now as parliamentary secretary. I am aware of the work you did in 1985 to 1990 and have considerable appreciation for that work, so I do need to understand better your position on this.

To frame my question, I think it's clear to us part of the changes we're introducing here is changing section 35 of the Fisheries Act. The current act says:

> 35. (1) No person shall carry on any work or undertaking that results in the harmful alteration, disruption or destruction of fish habitat.

We're proposing changing that to:

> 35. (1) No person shall carry on any work, undertaking or activity that results in serious harm to fish that are part of a commercial, recreational or Aboriginal fishery, or to fish that support such a fishery.

Is it fair to say, Mr. Siddon, you would prefer us to stay with the old section 35 rather than this proposed version?

Hon. Thomas Siddon: Thank you, Mr. Kamp.

Yes it is, because I feel the fisheries officers and the minister already have substantial latitude to define what constitutes a harm, alteration, or a destruction or disturbance to habitat—the HADD clause.

Mr. Randy Kamp: Thank you for that. At least we know where we stand on that.

You said in your comments, and I think you said to the media as well, that section 35 actually came into force in 1977. There was some work done since then that culminated in the habitat policy of 1986, which of course has your name on it. I've had the opportunity many times over the years to read through it, and I agree with much that's in there.

What puzzles me is where the policy, early on in the national application section, says:

> The policy applies to those habitats directly or indirectly supporting those fish stocks or populations that sustain commercial, recreational or Native fishing activities of benefit to Canadians. In addition, Fisheries and Oceans recognizes its responsibility to protect and increase fish stocks and their habitats that have either a demonstrated potential themselves to sustain fishing activities, or a demonstrated ecological support function for the fisheries resources.

Just note this final sentence in that paragraph:

> In accordance with this philosophy, the policy will not necessarily be applied to all places where fish are found in Canada, but it will be applied as required in support of fisheries resource conservation.

Then in the glossary, fisheries resources basically is defined precisely in the way we're introducing in Bill C-38, to focus, it appears to me, Mr. Siddon, exactly in the way you agreed with in 1986.

Am I misunderstanding this?

Hon. Thomas Siddon: I would certainly hope to think so, Mr. Chairman, through you to Mr. Kamp.

First of all, if you read clause 142, which is one-and-a-half pages long, and compare it to the section 35 that Mr. Kamp read from at the beginning of his remarks, which is two lines long, you will see there are a lot of words essentially to cover the ground he's described, but that appear to allow a lot of room for compromise.

I am saying there is room for compromise in the powers of the minister, working with his officials, and in the requirement of integrated resource management and planning, jointly with proponents of major projects and those who wish to express themselves at public hearings or directly to the minister in objection to particular proposals.

My major concern here, one of those concerns, is that you've replaced two lines with a page-and-a-half of language, and there are lots of subtleties if you dig into that language. The major one is, all the exemptions allowed that this minister can exercise in the subclause, which is about a half-a-page long.

Mr. Randy Kamp: Yes, but my point, Mr. Siddon, is that the strategic direction we're taking with the Fisheries Act changes in Bill C-38 is to provide greater focus on fisheries resources, not necessarily on fish. Now, I don't know if you agree with that, but let me carry on with the historical story.

That was in 1986. This was your policy, which reads very similarly to what we have in Bill C-38. I don't see how we can conclude anything other than that. That was the interpretation of section 35, the HADD section, as it was known by your department at that time.

Now as the years went on—after your time, Mr. Siddon—they developed a decision-making framework to know how to provide authorizations and which projects needed it and would get it and so on. That document from 1998, which was called "A Decision Framework for the Determination and Authorization of Harmful Alteration, Disruption or Destruction of Fish Habitat", has an important section, section 2, that says the first question the manager needs to ask himself is, if the project site is in an area potentially impacted by the project, is fish habitat present there?

It says this:

> Section 35 is not about the protection of fish habitat for the benefit of **fish**, but of *fisheries*. Therefore, the decision required is a determination of whether or not the potentially affected fish habitat directly or indirectly supports —or has the potential to support—a commercial, recreational or subsistence **fishery**.

I put it to you, Mr. Siddon, that this is precisely the direction that we're taking, the direction that you contemplated in the habitat policy, which is still in effect to this day. We are enshrining in legislation what is in the habitat policy, so that we have the legislative clarity and the tools to be able to move forward with the policy you put in place.

● (1925)

The Chair: Very briefly, Mr. Siddon.

Hon. Thomas Siddon: Mr. Chairman, what I see being attempted here, with all due respect, is to suggest that the principle of section 35 can be replaced by a long recitation of some of the practicalities of application, which is the place for regulations, not for legislation. The principle should stand as it stood in the first three lines of section 35—only three lines.

I also want to quickly say, Mr. Chairman, that there's a significant distinction between the use of the term “serious harm” in the proposed legislation and the term “No person shall carry on any work...that results in harmful alteration, disruption or destruction...”. “Serious harm”, under the definitions of Bill C-38, is that you have to kill fish before you've done serious harm. I think that's long after the barn door has been left open and all the cattle have got out.

Further to that, we're giving the minister such broad powers of stepping away from the provisions of the principle of the act, which is a protective principle, not a permissive principle. What this act is proposing is to take away the protective nature of the Fisheries Act —in particular, section 35—and replace it by a whole bunch of permissive loopholes, which I object to.

The Chair: Thank you very much.

Mr. Chisholm for seven minutes, please.

Mr. Robert Chisholm: Thank you very much, Mr. Chairman.

I'd like to pick up a little, if I may, Mr. Siddon, on what Mr. Kamp had to say. I can't help but start off by suggesting to you that I may well use again your reference that this bill has made a Swiss cheese out of the Fisheries Act. I think that's a wonderful line. I appreciate that, and I hope you'll permit me to use it tomorrow in the legislature.

I wanted to go to your response to Mr. Kamp. I believe he was trying in his questions to say, listen, we're just continuing on with what you were doing in terms of fish habitat. I want you to expand on that, but I want you to focus in on this point. You made the point that in our language we had two lines, and we had two lines because it allowed for compromise. You talked about the participation of people who agreed and who disagreed with a project, and the ability that this allowed to reach a compromise. I wonder if you would mind focusing your response to that issue as you defined the strength of the fish habitat provisions.

● (1930)

Hon. Thomas Siddon: To begin, Mr. Chairman, if you write into legislation something that goes beyond principle and it involves a lot of words—which you know as lawyers describe them, they're million dollar words or silver dollar words—you open up a field day in court for challenges. Whereas the principle of the habitat protection provision in clause 35 is watertight.

If the fisheries officials, in consultation with public interests and proponents in projects, can work out common-sense practical solutions, we're all for that, but that's already in the act. This provision creates all this seriatim list of exemptions and exceptions that a court is going to have to determine in favour of the act, which gives all kinds of holes in the Swiss cheese to opt-out, to have only certain fish covered for example, to have only certain rivers and lakes be regarded as high risk and other practices regarded as low risk. We're giving all kinds of opt-out clauses.

There's a place in regulation for that, but not in legislation. That's what's so offensive about the way to create all this watertight list of language, which is being passed through a finance committee not an appropriate fisheries or environment committee. That makes a travesty of the democratic process of hearing from expert witnesses, not just former ministers but scientists, biologists, wildlife interests, and conservation groups. They should be here and not limited to four days but to properly deal and dispose with these questions.

Mr. Robert Chisholm: Thank you very much for that. I want to follow up on that point as well. In the letter that I believe you and three other former ministers penned to the Prime Minister, the letter is quoted as saying:

> ...Canadians are entitled to know whether these changes were written, or insisted upon, by the Minister of Fisheries or by interest groups outside the government. If the latter is true, [exactly] who are they?

I pick up on that because we've had some representations earlier this week from a few groups who clearly had made representations to the government and had been involved in consultations with the government. These were mostly industries involved in extraction, as opposed to some others who have concerns about the bill who weren't involved in consultations.

I would like you to speak further if you would. It goes back to the point that you just finished off with about how important it is to have diverse opinions speaking to important legislation like this.

Hon. Thomas Siddon: The letter that you referred to, Mr. Member, is available. It's not in both official languages tonight, but if members wish to have it, I think they could approach the chair for a copy.

It does reflect our apprehension and concern that this broader group of interests is being totally pushed aside. I've even heard the term “environmental terrorists” used in the context of major projects like the proposed Enbridge pipeline—which I oppose, but for other reasons that we can get into another time. I'm all for economic development, but for the benefit of Canadians and jobs in Canada, not for getting it out quickly to China for 50¢ on the dollar to create employment over there so they can send us back products we can't afford.

That's a digression, but the fact of the matter is that there are numerous examples of where this role of public engagement, public involvement....

Getting back to your central question, as I've heard from members of caucus who I know, there are a couple of examples being used around the Conservative caucus of why these changes are so important. One is the case of the farmer who wanted to drain his field in Saskatchewan in order to allow people to park cars there for a rock concert. There were fish in that field, and the habitat people came along and said, “You can't do that”, and undertook prosecution under the Fisheries Act.

Now, I think that's a total distortion of the purposes of the habitat protection provisions. It's just an artifice used as an excuse to make these changes. In fact farmers and environmentalists and biologists should be working hand in hand under the policy that I have described, as we do in British Columbia, where even the provincial government is teaching farmers how to responsibly continue their agricultural productivity without pouring all kinds of chemicals into drainage ditches, without plowing to the water's edge and taking all the trees and riparian areas out. We have a program called “Salmon-Safe” in British Columbia, which the farmers participate in. But this kind of shallow, almost phoney excuse for change is, I think, improper, as is the suggestion that people can't even build a dock in front of their cottage.

I can tell you that on the lake on which I live, 80% of that lakeshore has been alienated from its natural form, largely because people do whatever they darn well please. They think if they own a piece of waterfront property, they're entitled to bring sand in, to build retaining walls, to plow and move the water's edge, and to build wharves. These are not just simple little wharves but great big things for super-yachts.

We have a bill here that says they should be free to do that without any proper examination by any wildlife biologists or the Department of Fisheries, and frankly I just think that's wrong.

● (1935)

The Chair: Mr. Chisholm, thank you. You're already quite over your time. We have to move on.

Ms. Duncan.

Ms. Kirsty Duncan (Etobicoke North, Lib.): Thank you, Mr. Chair.

I'd really like to thank the witnesses.

I'd like to particularly thank you, Mr. Siddon, for your thoughtful, important testimony. Both you and Mr. Simard spoke to history teaching hard lessons, reminding us that prevention, having a good environmental legislative framework, is our best line of defence, and that, even with that, you want to reduce the risk. Worst-case scenarios do happen. I think the bill shows the complete failure to learn from the past, whether it's the *Exxon Valdez* or it's Horizon; cutting environmental legislation can result in dire consequences.

Mr. Siddon, we agree with you. This is an affront to democracy. This should be hived off. It should have been sent to the environment committee to study, to those who have the proper expertise.

Would you agree that should happen?

Hon. Thomas Siddon: I certainly do. I was a minister at the dawn of the environmental responsibility era. I was part of a government that took that to the point of practice through the development of Canada's first and only green plan and various pieces of legislation that I spoke of earlier.

What I see this bill doing is fast-tracking comprehensive environmental assessments, which ought to be as thorough as they need to be in dealing with major...such as the pipeline through 800 pieces of watershed in British Columbia without resolving the aboriginal interests in those lands. I mean, that's just totally irresponsible to try to push that through.

I think this legislation in its present form is taking us back to the 1970s, where we were before. I have to say, I was the minister who signed the Alcan Kemano agreement. We had very substantial scientific justification for doing what we did, but we didn't get the public engagement aspect correct. Alcan spent several million dollars, bored a tunnel halfway through a mountain, and it was finally overturned.

I had forewarned members of the government that this is where we're headed if we arbitrarily push through this type of legislation to get around appropriate, 21st-century environmental processes and end up getting hung up in court, maybe at huge expense to proponents, by trying to have simple, watertight answers in this legislation, which isn't where they belong at all.

Thank you.

Ms. Kirsty Duncan: Thank you.

We agree. We have been trying to find out how many assessments will now lack federal oversight. When I asked the minister I was told that was a hypothetical question. We learned yesterday from the environment commissioner that it's going to go from 4,000 to 6,000 assessments down to 20 or 30. The minister in the House today said that's not correct.

We're trying to find out, for example, which of the federal laws are stronger than the provincial laws? What assessments has the government done of the adequacy of the provincial assessments and how it's going to work out equivalency? Should that be your recommendation going forward? I guess what I'm asking is, we'd like to hear your recommendations that we should go back to Finance with.

Hon. Thomas Siddon: It starts, Mr. Chair and Madam Duncan, with my belief that the federal Minister of Fisheries and Oceans is the only elected responsible minister in all of Canada with a fiduciary and constitutional duty to uphold the provisions of an act that has 144 years of history, and that ought to remain as such.

When another member talked of the Swiss cheese metaphor that I've used, in fact, all of this downloading has very alarming potential consequences. If any of you have worked with provincial governments as we have and I did as minister of fisheries, we were the watchdog, the guardian at the door when it came to dealing with the forest, mining, and other industries in British Columbia—all of which came under provincial constitutional jurisdiction.

If you download responsibility for fisheries to those provincial agencies, which have had their budgets stripped, they don't have the scientific or enforcement capacity, they don't have the legislative capacity. Yet we're saying that we can go into administrative arrangements. I'm really especially alarmed by clause 134, which essentially is the “downloads to the province” clause, which is essentially the federal government opting out. It actually says in either that clause or a nearby one that where provincial equivalency can be shown, the federal government is going to vacate the field. The federal government is going to step away and let the province take over the administration. It says also, if they don't do a good job, we'll take it back. But that's too late.

● (1940)

Ms. Kirsty Duncan: Mr. Siddon, how do you think they're going to even determine equivalency if those assessments haven't been done of adequacy?

Hon. Thomas Siddon: I don't think it's possible. You know we have had a major investment in the capacity of the Department of Fisheries and Oceans. We have several laboratories all across Canada. We have a history of learning about some of the problems I listed in my opening remarks, where we learned by our mistakes. These provincial agencies, with all due regard for our provincial environment ministry in British Columbia, don't have the resources.

The provincial government of British Columbia brought in something called a riparian area of regulation, which says you can't build within 30 metres of the water's edge on any waterfront property, but if you get a qualified private environmental professional to tell you how to do it, we'll let you have an exception. Then they turned that jurisdiction over to the municipality and said, “Now you run it, but by the way, I'm a local regional rural director. We don't have any resources and we don't have any tools, and that's the job the federal ministry of fisheries and oceans ought to be doing."

Ms. Kirsty Duncan: We've seen these cuts at the federal level. Last summer they announced cuts of perhaps 700 positions. Under the budget, they've announced another 200 positions. Can you comment on that and give us your top three recommendations that should be in our report going back to the committee?

Hon. Thomas Siddon: I was going to wrap up with my recommendations, but first of all, I think it's extremely important you separate the bill. That was the message in the letter that four ministers signed to the Prime Minister. This matter and these potential consequences do not deserve this kind of.... I know Mr. Flaherty. I'm sure he's a personal friend.

But this is the wrong way to go about it. This is the wrong committee to be dealing with these questions, and responsible members of Parliament of all parties would take those environmental provisions of clauses 52 to 169 and bring forward a separate piece of environmental modernization legislation, whatever you want to call it. But don't give us this gobbledygook of creating an improved act, when in fact there are so many questions that are not being addressed here and I am not as well qualified to raise as a lot of other people who might be before a committee, if we did it right.

The Chair: Thank you very much, Mr. Siddon. We have to move on.

Ms. Duncan, your time has expired.

We'll now move into five-minute rounds, starting with Mr. Allen.

Mr. Mike Allen (Tobique—Mactaquac, CPC): Thank you very much, Mr. Chair. Thank you to our witnesses for being here.

Mr. Wojczynski, I'd like to start with you. I know it surprised you, right? I have just a couple of things. I'll get to three or four questions, maybe, if I have the time.

Clause 136 of the budget implementation act, which deals with sections 20 and 21 of the Fisheries Act, is all about obstruction of fishways, fish passage, and water flow. It gives the minister an opportunity to order installations in the public interest, such as guards, screens, coverings, and nettings. Can you provide your thoughts on that section and those changes, and what that means to the Hydropower Association and your members?

Mr. Eduard Wojczynski: Yes, this is a new provision that does affect us. There has been, in recent years, an increasing interest and determination by DFO on a policy front that fish passage is something it increasingly looks for, but it wasn't something for which it had the same legislative teeth, perhaps. Our industry certainly noticed that was added. It gives an extra degree of ability for DFO to require that, not just on the basis of harm to fish, but actually simply on the basis of requiring or allowing free passage. It's an increasingly new requirement for us.

● (1945)

Mr. Mike Allen: Basically, any dams you'd be looking at are trying to achieve that. Would that be a requirement?

Mr. Eduard Wojczynski: The way we understand it, now when we go ahead with new dams, there will be a greater requirement for them than there would have been in the past. We're not sure what's going to happen with existing dams. That will depend on the individual circumstances, I guess.

Mr. Mike Allen: Okay, but it looks as if he could order it, if there were a situation of fish issues.

Mr. Eduard Wojczynski: Yes.

Mr. Mike Allen: Thank you very much.

You also commented on federal liaison and provincial liaison, and you seemed to welcome the idea of provincial governments. You don't seem to stress any issues with the provincial governments being able to take on some of these bigger roles. In fact, for the fish and fish habitat provisions, you said there's an overlap with the provinces on some of this.

Given that a lot of development of hydro dams in Canada occurs by, in some cases, provincial crown corporations—as is the case in my province—New Brunswick—and also in Quebec, would you see an equivalency provision to the province in that case as a conflict, or would you see that as possibly a bigger role or more important role?

Mr. Eduard Wojczynski: There certainly can be an appearance of conflict at times. I think that question is a good one.

Our experience is that the provincial fisheries people are the ones who are closer to what is happening to fish in their jurisdiction. In most provinces, if not all, it's the fisheries departments that are charged with the management of the fishing quotas—I'm talking about fresh water. They're closer to the issue and they have the responsibility there, not just for that part of their economy, which is, let's say, hydro, but also for the other parts of the economy. So they take that very seriously. I can say with confidence that I know in our province—but I know it's true in other provinces—that's taken absolutely seriously and would not be subjugated just because there's a crown corporation there.

Mr. Mike Allen: You did also say one issue about improving, and it involved activities to enhance species. I might ask you to clarify that. I might not have heard that just right. However, there are new provisions in the bill, in proposed section 4.4, which talks about partnerships and the minister being able to create partnerships with conservation organizations and others to improve habitat, whether that be through stocking or other kinds of activities.

Do you see that as one possible provision to help with enhancing the species?

Mr. Eduard Wojczynski: I think when you're referring to my comment on enhancing, I was referring to the Species at Risk Act. The provision you're talking about is in the Fisheries Act. The comment we were making is that we see—and we had a lot of discussions in various forums, whether the species at risk advisory committee or other places—that there is now no good opportunity to encourage industry to focus on overall stewardship rather than just on the individual compliance mechanisms that are in SARA. We think there's a lot of positive opportunity there that would be good for fish habitat and overall for industry as well.

Mr. Mike Allen: Okay. Really quickly—

The Chair: Thank you, Mr. Allen. Unfortunately, your time is up.

Mr. Anderson, five minutes, please.

Mr. David Anderson: I'll give Mr. Allen an opportunity to ask his question.

Mr. Mike Allen: The one follow-up question, then, is with regard to dams in some of the rivers. I'll use New Brunswick as an example, which is working with organizations such as the Saint John River basin salmon recovery unit, the Miramichi Headwaters, and those other ones.

Do you see the ministerial ability to create partnerships and investments in conservation being a positive step in working possibly even with your members on that?

Mr. Eduard Wojczynski: Absolutely. There's a lot of opportunity there, and I think it's very positive. If you have the bigger utilities, whether crown or privately owned, with a number of hydro facilities, they're very familiar with it, and they do a lot of the research. Frankly, what's happened....

Science is very important, and whether you're talking about provincial governments or federal governments, the reality is that there has been less research. Private industry often is picking it up, subject to other people's review.

So there's a lot we can do, working with governments and others, to overall have better stewardship.

● (1950)

Mr. Mike Allen: Thank you very much.

Thank you, David.

The Chair: Go ahead, Mr. Anderson.

Mr. David Anderson: Thank you. I guess my time is short here.

The Chair: Four minutes.

Mr. David Anderson: Ms. Schwann and Mr. Wojczynski, do you think this idea of "one project, one assessment" actually can increase the timeliness and certainty of environmental assessments? Would you agree with that?

Ms. Pamela Schwann: Yes, we'd agree that it does definitely assist in predictability for the industry in terms of knowing what their timeframe will be for their investment. It also, I think, ensures that the outcomes are well understood as you go into an environmental assessment process.

Mr. David Anderson: Would you agree with that as well?

Mr. Eduard Wojczynski: Yes. We've had projects—for instance, the Wuskwatim project, which is actually just under construction—where we've had both federal and provincial processes. In both processes we were asked much the same questions, and had duplicative processes. One process could have done the job just as well.

Mr. David Anderson: Okay. So the whole idea is that it reduces bureaucratic overlap as well. Both of you would agree with that. I think you both mentioned that.

That actually puts you in agreement with the premiers. Today the four western premiers put out their news release talking about environmental assessments.

I'd just like to read a couple of the sentences they wrote:

> For several years, Western Premiers have noted the importance of streamlining the environmental assessment process through a one project, one assessment approach that reduces wasteful duplication and delays. The 2012 federal budget shows that the federal government is taking action and Premiers welcome the progress being made.

Further down they talk about how the premiers and the federal government do share common goals. They say: One project, one assessment, one decision increases timeliness and certainty, and reduces bureaucratic overlap without compromising environmental rigour. With an environmental assessment system that makes sense, resources at both orders of government are freed.

I would assume that both of you agree with that comment as well.

It's good to see leadership coming from the western Canadian premiers as well, and an agreement that we're moving in the right direction on this.

Ms. Schwann, I wanted to ask you one of the questions that Mr. Allen asked. Do you see partnerships being encouraged in this legislation? Do you see that as part of your future, working with conservation councils and conservation groups and that kind of thing as well?

Ms. Pamela Schwann: Certainly with respect to the fish habitat alteration agreements, there are many partnerships already between industry and community groups, which of course are stewarded by the government. There already are many different types of conservation agreements that occur right now in development stages.

Mr. David Anderson: Okay.

I doubt I have much time left here, but I would just like to get both your positive and negative here. If you could talk about some of the examples where you've been able to work together, that would be great. If you have some examples of where duplication in the current process has really slowed down some of your members' projects, I would be interested in hearing that as well. I'm interested in hearing both the positive and the negative.

We know that things like farmers' fields have been included in this to the detriment of local communities and those kinds of things, but where have you run into duplication? Where have you been able to work well with conservation councils?

Ms. Pamela Schwann: In terms of duplication, one example I can bring forward is a licensed tailings facility that ended up undergoing.... It was licensed by the provincial government, and it ended up going through at least a two-year delay on the federal process. It was deemed as a fish habitat because there was a fish in it, even though it was a licensed tailings pond.

That cost a significant amount of money and delay for the company without any environmental benefits in terms of outcomes. It was a ridiculous application of the existing fish habitat policy. That would be one example of, I think, some poor cooperation.

I think where we're seeing some positive collaboration in agreements right now is in terms of some of the work in northern Saskatchewan. There are lists of projects that would absolutely make a difference in fish habitat that might not be in an immediate area where there's activity. Allowing fish habitat banking to happen so that there are sufficient funds at a point in time that can actually work to improve a designated project that is identified on a provincial or federal priority list, I guess would be an example of something that I think would be beneficial, or is continuing to be beneficial, on a cooperative basis.

The Chair: Thank you, Ms. Schwann.

Mr. Anderson, your time has expired.

[*Translation*]

Ms. Quach, you have five minutes.

Ms. Anne Minh-Thu Quach (Beauharnois—Salaberry, NDP): Thank you, Mr. Chair.

I would like to use my time to ask Mr. Simard some questions.

Mr. Simard, thank you for joining us. I would first like to point out that you said that Bill C-38 violates the non-regression principle in terms of environmental protection. I would like you to provide us with more information about that.

It is said that Bill C-38 will enable the federal government to delegate environmental assessment responsibilities to the provinces, under the pretext that time delays are too long or that there is duplication of work. However, yesterday, the commissioner said that the delays were due to a lack of coordination between departmental agencies and that an agency may exempt the same designated project because it no longer has enough time to assess it.

As a result, the number of assessments could go from 6,000 to 30 per year. How could that affect the Great Lakes or the Gulf of St. Lawrence?

● (1955)

Mr. Christian Simard: This is important. I have heard a lot of nonsense about it. However, as a former sovereignist MP, I am very interested in the issue of overlap between provincial and federal authority.

As you know, there are already some agreements on environmental assessments between the federal government and the Government of Quebec, with a view to using the best procedure available. When a project comes mostly under Quebec's jurisdiction, Quebec's procedure applies, and when a project mainly comes under federal jurisdiction, federal procedure applies. There is an agreement about that.

Actually, this provision looks more like an abandonment of responsibility than delegation. There are various elements involved. For instance, earlier, it was said that habitat protection responsibility may be delegated to third parties. However, those third parties can be companies, which are not necessarily conservation agencies.

If we take a closer look at this, it is not a matter of halieutic strategy—in other words, a strategy for protecting fish and their habitat. It is more of an industrial strategy based on the philosophy whereby the environment is an impediment to resource development. According to that philosophy, if a lot of resources are developed and a lot of money is made, some of that money will go towards environment protection. That is a very outdated view of sustainable development, but it is nevertheless the underlying strategy.

When it comes to the Gulf of St. Lawrence, we could say that it is better for a single office—in this case the National Energy Board—to assess the gulf, instead of five provincial offices or partnerships between Canada and Quebec or Newfoundland and Labrador. In a way, that is somewhat logical. The issue stems from the fact that this task will be entrusted to the National Energy Board, which is primarily concerned with energy projects and for which environmental or habitat protection is an afterthought. The whole process is being corrupted.

In some cases, it may be said that this is a good thing. We may think that the Gulf of St. Lawrence comes under federal jurisdiction. Resources are a provincial responsibility, but habitat comes under interprovincial jurisdiction. Therefore, if the federal government does not conduct a full assessment, it is abandoning its responsibilities.

The reform is supposed to protect fish habitat, but in fact, it is unfortunately a tenacious attempt to create shortcuts and bypass assessments in order to move things forward as quickly as possible. For instance, Bill C-38, which is before us today, allows the National Energy Board to decide within a 45-day period that a seismic exploration assessment is unnecessary. However, that may lead to serious problems for sea mammals. You know, exploration zones are created to check whether there is oil on site, and the board could simply decide, within 45 days, that it is unnecessary to conduct an assessment at the exploration stage. However, we know that the exploration projects in the Gulf of Mexico were a failure.

The government is playing the sorcerer's apprentice by proposing a very broad reform, included in a piece of legislation on budget application. This is a very broad reform that is riddled with shortcomings and possible loopholes to encourage—in the absence of scientific evidence and time for reflection—overly rapid development of natural resources that may cause massive pollution.

Ms. Anne Minh-Thu Quach: Do you have any examples of environmental accident risks?

Mr. Christian Simard: Yes, I have a very simple example. Corridor Resources Inc. carried out a study on its project, Old Harry, located in the middle of the Gulf of St. Lawrence. Environment Canada told that company that its assessment was invalid because it seemed to indicate that the oil could not spread beyond a 20-km area—that it would evaporate, as if by magic. Environment Canada told them to redo their homework. However, if it had been the National Energy Board and not Environment Canada, the board people would have considered there to be no impacts on fishermen and commercial fishing, seeing as how it was a matter of only 20 km. They would have eaten it all up.

Without crosschecks and without an independent environmental assessment of energy projects, there could be an incident on the St. Lawrence. This reform would have been carried out without any intelligent work behind it. That is the case in terms of fisheries, and the same would apply to wetlands, Ms. Quach. The Fisheries Act was a barrier that protected those essential regions. However, that barrier has unfortunately collapsed.

● (2000)

[*English*]

The Chair: Thank you very much. We've gone well past the five-minute mark.

Thank you, Madam Quach.

Ms. Rempel, you have the floor.

[*Translation*]

Ms. Michelle Rempel (Calgary Centre-North, CPC): Thank you, Mr. Chair.

My question is for Mr. Tremblay.

[*English*]

You spoke a bit about the aboriginal consultation process. I just wanted to give you a little bit more of an opportunity to speak to that.

One of the things that Bill C-38 does is better integrate aboriginal consultation by designating a lead department or agency as the federal coordinator on specific projects. How do you foresee that this change to having one point of contact during the consultation process will help aboriginal communities?

Mr. Jean-François Tremblay: You have to understand that there are probably more than 600 first nation communities across the country, and add to that aboriginal communities and Métis communities. The duty to consult can apply and can be triggered with each of them. It can happen more than 1,000 times per year. When there are many departments involved, who do you call? Some of those communities are less than 100 people.

Sometimes in the federal government—and it was mentioned earlier—Fisheries will be in charge. They will call Aboriginal Affairs, they will, of course. call Transport, and in some cases, they will call Environment and so on. Having one person designated for a major project, having one department with the lead, means that they know who to call.

Making sure that there's a single window is something that we heard in the past from first nations, and that's what we also heard from other groups. It's particularly important if you have different first nations communities and aboriginal communities involved because each of them can call a different person. So, at the end of the day—

Ms. Michelle Rempel: It sounds like you've heard a lot from stakeholders that this is a problem. Having to call into various departments could contribute to almost a consultation fatigue. Have you actually seen examples of this? Perhaps you could talk to the committee about how the proposed changes to the process would help alleviate that fatigue.

Mr. Jean-François Tremblay: Yes, we heard from aboriginal groups. We also heard from courts in the past who told us that we had to better coordinate within the federal family.

I don't necessarily have one specific example in mind, but you can go with the mining industry, you can go with whatever project that would be considered, even a pipeline, for example. In those cases, you will, of course, have different jurisdictions that would be involved. You can have many first nations or aboriginal groups who would be involved, and you have different departments that would be involved. Having one person, one single window, if you will, who will be in change of the consultation and the discussion is very helpful.

Ms. Michelle Rempel: Our government, through these changes to process, is also committed to providing funding to support consultations while establishing protocols or agreements with aboriginal groups to clarify consultation expectations for a given project. Do you think that this will improve the consultation process, and if so, how?

Mr. Jean-François Tremblay: In this bill, in this legislation, there will, of course, be funding for the environmental assessment. If you want consultation to be meaningful, you have to make sure that the participants have the capacity to participate in the negotiation, and that's what the proposal actually offers.

So, yes, we think that it's important. That's what we heard in the past from aboriginal groups and others, that when there's a consultation process, there is capacity to participate in what people would call a meaningful consultation.

Ms. Michelle Rempel: Thank you.

I'd now like to continue the line of questioning, perhaps with the hydro association, on the need to coordinate consultation.

You appeared before the Standing Committee on Environment and Sustainable Development during the statutory review of the Canadian Environmental Assessment Act. We talked a little bit about the changes that were made to CEAA in 2010 with regard to consolidation—a single point of contact within the government or a lead agency for a consultation process. The Commissioner of the Environment said, in 2009 I believe, that this was an issue.

Based on some of your projects do you feel that this was rectified through the changes made in 2010?

● (2005)

Mr. Eduard Wojczynski: Movement to having a consolidation of aboriginal consultation in one place or one person makes a lot of sense. We do our projects, as is quite typical now across the country, in some form of partnership with the local aboriginal communities and we work quite closely with them. We hear continual complaints about consultation overload, confusion, or they deal with people who really don't know how to do consultation properly. Bringing it together and coordinating it better will make a huge difference from the aboriginal point of view but also from a project and environmental protection point of view.

Our last comment, which I think is an important one that I didn't quite hear and maybe it was there, is that for a lot of the communities having some sort of relationship and a certain degree of trust with the person or entity who is doing the consultation is very important, more so perhaps than for some other communities. When you consolidate, it helps.

Ms. Michelle Rempel: Do you feel that the changes to regulations will allow that?

The Chair: Thank you for that clarification.

Mr. Eduard Wojczynski: Yes, they will help that

The Chair: Ms. Rempel, your time has expired.

We now move on to Mr. Toone for up to five minutes, please.

Mr. Philip Toone (Gaspésie—Îles-de-la-Madeleine, NDP): Thank you, Mr. Chair.

[*Translation*]

If I may, I will continue along the lines of Mr. Simard's comments regarding the Canada-Newfoundland and Labrador Offshore Petroleum Board.

In our region—that of the gulf—I agree that we are far from the exhaustion that follows consultation. The board created a review commission, the Richard commission, which was very confused because of the Swiss cheese—if I may go back to this idea of Swiss cheese—in terms of the regulations in the Gulf of St. Lawrence. In fact, it practically abandoned its consultations. There are currently no consultations on the hydrocarbon drilling development in the Gulf of St. Lawrence. The federal government's virtual abandonment in that area is clearly worrying coastal communities.

I am wondering how it can even be suggested that hydrocarbons be developed in the gulf when half of the provinces share one gulf. Those provinces are currently unable to create the administrative or legislative consistency needed for oil companies to be able to even suggest developing the gulf. The step backwards proposed by the bill currently before us will create a situation where governance in the region will be almost impossible. It will even slow down our region's economic development. That is one of the negative effects of that bill. It is not a matter of protecting habitat or regressing in terms of environmental law. The bill is also impedes economic development, and that is unacceptable.

So I would like to address Mr. Siddon.

[*English*]

If I could continue, when it comes to the peculiar consequences of the changes in front of us, again, it's not just the protection of fish habitat, which is in and of itself an environmental and fisheries issue, but other issues are going to come up. One is if we don't protect the fish habitat properly we're going to be putting in peril other aspects of environmental protection. I'm thinking, for instance, waterways will become much more contaminated if we don't properly protect the filtering capacity of fish habitat.

Fish habitat has more of a role than just protecting fish. It has a role of protecting the entire environment and our drinking water. I might add that the Alberta Fish & Game Association has actually come out and said this as well, that in the heartland of the government's own fortress—Alberta—even there people are thinking that this particular bill in front of us might very well have a very deleterious effect on our environment and on our drinking water.

What do you think is the proper approach right now? Is it to redefine “serious harm”? Is serious harm, the way that the new bill has proposed it, going to be sufficient to protect our environment? Where should we be going from here? What kind of modifications to the bill should we be proposing at this point?

● (2010)

Hon. Thomas Siddon: Is this for me?

Mr. Philip Toone: Yes.

Hon. Thomas Siddon: I'm glad the member has raised this question of the habitat having broader importance and significance. If you consider the canary in the coal mine example, if the fish aren't happy—I have always liked this picture on the front of our habitat policy, because the fish has a happy face—and healthy in their habitat, you can be assured we humans are not going to be happy or healthy.

There are increasing levels of contaminants, right to the level of endocrine disruptors, pharmaceuticals, and birth control pills, that our sewage treatment plants can't deal with. Our water filtration and sewage treatment systems are costing us hundreds of millions of dollars. In many parts of Canada we'd like to just get back to natural filtration—to wetlands, for example—and not put effluent into some pit up in some hills, or back in the river, but put it into an area where its remaining nutrient value can be put to good use. We have to protect the habitat.

If I could quickly bootleg something, Mr. Anderson suggested that I'm not in favour of consolidating and unifying our ability, working with the provinces. He asked the other two witnesses, but not me. I am in favour of consolidation and restoring efficiency to the administration. If the Minister of Fisheries is not tough enough to bring common sense to the actions of his officials, then somebody else should be doing the job.

The Minister of Fisheries has to be front and centre in this whole environmental review process. If values like the habitat—and it's important to the water we drink—are at all going to be protected, then the federal Minister of Fisheries has to be there. In my time, when the provinces had their own jurisdiction over forestry, mining, and hydroelectric, we were told we should cop out. We were sued many times for the abdication of my fiduciary duty to protect the fishery.

The Chair: Thank you, Mr. Siddon.

We have gone almost six minutes, Mr. Toone, so you have had plenty of opportunity.

Ms. Ambler is next for five minutes.

Mrs. Stella Ambler (Mississauga South, CPC): Thank you, Mr. Chair, and thank you to our witnesses for being here this evening.

My first question is for Mr. Wojczynski. Do you think a two-year time limit is sufficient for large projects? Do you think that's a reasonable amount of time to assess a project? In general, will bringing timelines into the review process improve the system?

Mr. Eduard Wojczynski: I think two years is sufficient in virtually all cases. I have had many friends and colleagues comment on that question. I think the critical thing you have to start with is that when you are doing a review of a major project and you have two years, you are not trying to do the studies that are required. You're not trying to do the evaluations that are required. You are not trying to write reports. Those are already supposed to be available with all the information. If they're not, the clock stops and that is not included in the two years. The two years are to assess the information that is available, see if it's adequate, draw conclusions from it, and get public input. Two years is more than enough.

Mrs. Stella Ambler: Sure. You fill in the safeguards before you get to that point, don't you?

Mr. Eduard Wojczynski: Yes. The clock doesn't work until you provide the information required. If you don't, you are asked for more.

On your second question, having timelines is a good idea. We've had projects that have gone for four years—very clean, good projects. There was a lot of spinning of wheels, people changing jobs, and having to redo things. If it had been kept to a one-year timeframe, or even two, it would have been more efficient for everybody.

Mrs. Stella Ambler: Thank you.

Ms. Rempel said approximately 60% of electricity is generated in Canada. I believe in Quebec it's even higher, and somewhere around 75% of power generated is hydroelectric. I'm wondering what the percentage of the total cost of developing and bringing new hydro generation online is related to the EA process.

Mr. Eduard Wojczynski: First of all, it's much higher than 90% in Quebec. Secondly, on the EA process, if you're developing a project worth $6 billion, there's probably $1 billion of interest in there. You're probably spending $300 million to $500 million on the environmental studies, consultations, and engineering required just to get through the whole process.

● (2015)

Mrs. Stella Ambler: Would you say those funds could be better spent in actual protection of the environment, after the fact or once the project has begun?

Mr. Eduard Wojczynski: To be honest about it, I think most of that cost that I've just mentioned is probably required regardless. You need to do those kinds of studies. You need to do the work ahead of time.

A big thing though is, if you take four years instead of let's say, two years—I'm talking about a large project—then you're probably incurring $30 million extra that you wouldn't have had to have in terms of process costs, plus you're accumulating a lot of interest. Plus, when you're dealing in a market where you have to have things done quickly, the markets can't accommodate super long timeframes, and you will go away to something of a shorter timeframe like coal generation.

Mrs. Stella Ambler: Right. So you don't begrudge the amount of funds that you need to spend on the EA process but simply the fact that it's at least twice as long as it needs to be makes the amount much higher than it already seems to be?

Mr. Eduard Wojczynski: Yes.

Mrs. Stella Ambler: Thank you.

You also mentioned that hydro power developers have $125 billion potential investment waiting, which would create over a million person-years of employment across the country. We have an NDP leader in Canada who believes in pitting east against west and talking about projects that only benefit the west. Would you say the projects that you're developing would also benefit all of Canada, would create some of those jobs all over Canada, and if so, can you give us some examples of the types of jobs that would be created by a hydro project?

Mr. Eduard Wojczynski: I'm going to avoid any political comparisons, but I will say that the Canadian hydro is spread out across Canada in virtually all jurisdictions.

Mrs. Stella Ambler: Thank you.

I have one quick question for Mr. Tremblay. Ms. Rempel was talking about the consultation process and the changes to that in CEAA 2012, but I wanted to ask you specifically about funding and the fact that the new regulation provides funding to support consultation, while establishing protocols or agreements with aboriginal groups to clarify consultation expectations on given projects. How do you believe this will change, or do you believe it will improve, the consultation process?

The Chair: Very briefly, Mr. Tremblay....

Mr. Jean-François Tremblay: The funding is $13.6 million over two years, so $6.8 million per year for consultation with aboriginal groups.

On the protocol and the MOU with provinces and aboriginal groups, it's very helpful because there is a clear understanding among the partners on who's doing what at what time before the projects happen. So it's very helpful in building the relationship before you need it, if you want. That's something that we're looking for in terms of doing. We already have some protocols that are signed with some provinces, and we want at the end of the day to have protocols with all provinces and territories. We are also looking at more MOUs with provinces and protocols with aboriginal groups.

Mrs. Stella Ambler: Thank you.

The Chair: Thank you very much.

Mr. Chisholm, I believe you're going to share your time with Mr. Nicholls. You have five minutes, sir.

Mr. Robert Chisholm: I am going to do that, Mr. Chairman.

I want to make this comment though. It's interesting the exchange Ms. Ambler...I just want to walk on that ground too. Ms. Rempel started it with Mr. Tremblay about consultation. Mr. Tremblay, I think you or Ms. Rempel referred to consultation fatigue. Last night before this committee, we had the grand chief of the Assembly of First Nations here, and he talked in very clear terms about a complete and utter lack of consultation. It's why so many of the first nations in this country talk about the government being tone-deaf.

I want to go to Mr. Siddon and I don't want to trespass on my colleague's question too much, Mr. Siddon, but I know you wanted to make three recommendations and you're not going to get a chance to wrap up. One recommendation you made was to split at least the Fisheries Act out of this bill, but you said you had three. I wonder if I could give you a couple of seconds to lay out those other two, please, for us?

Hon. Thomas Siddon: Thank you, Mr. Chisholm.

I have a number of recommendations and comments on several clauses that we haven't gotten to.

I'd refer to clause 147, the “let them off lightly” clause, because I was the minister who brought in fines of up to $1 million to the Fisheries Act in 1989. We brought in jail sentences for corporate offenders. We treated everyone equally.

But this legislation indicates that if you are a non-profit or a private individual or a corporation with under $5 million of annual income, the minimum fine is going to be $5,000 on summary conviction or $15,000 on indictment.

What do you think a judge in court is going to do with that? This is uncanny, this inclusion of minimum fine thresholds, because that's where the first offence is going to be leaning to—the lowest end.

We brought in these large fines as a deterrent, and for the most part they worked. They are probably the reason that many industry representatives protest. But if we want to save our habitat and save our fish-bearing waters, we have to have some teeth in this legislation.

That's certainly one of the provisions I would comment on.

Another is what I call “the minister cops out” clause, clause 150. I think this is probably one of the most important defects in this legislation—the minister's being able to download not only to provincial governments, under a previous clause, but even to private sector interests, even to delegating enforcement. This is happening in British Columbia with these so-called qualified environmental professionals. The whole thing can be privatized, if we're not careful. So who is going to mind the store?

So the business of the minister not recognizing his overriding responsibility, his constitutional duty, causes me great concern.

● (2020)

Mr. Robert Chisholm: Thank you very much, Mr. Siddon. I appreciate that.

I want to pass what's left of my time over to Mr. Nicholls.

The Chair: You have less than two minutes.

Mr. Jamie Nicholls (Vaudreuil-Soulanges, NDP): I have a very brief comment to make to Mr. Wojczynski before I pass on to Mr. Siddon.

I want to recognize the efforts you have put into fish rehabilitation. I know it's a very costly enterprise to do, which is why protecting the fish habitat is so important. We end up having costs downstream, once the habitat is destroyed. It's very costly.

That brings me to the point I want to ask Mr. Siddon about.

You said that we shouldn't change the law, but rather should become stronger on implementation and application of the existing law. Can you elaborate on that?

Hon. Thomas Siddon: If we hear criticism of certain specifics, whether it's flooding a field or draining a field or somebody wanting to put a wharf up, that's a matter of how the minister runs his department. But the minister still has a constitutional duty to stand up and be counted, and he ought to be very much in this process. I guess I'm sounding repetitive, but I think the dilution and diminution of the minister's....

I'd be happy to hear Mr. Ashfield stand up, as all former ministers of fisheries whom I recall have done, and say, “I understand what my job entails: I am there to look after the fish”—full stop—“That's what I am appointed by the Prime Minister to do”, period.

Mr. Jamie Nicholls: So in summary, the problem isn't with the law; the problem is with good management practices in the ministry and the associated bureaucracy. That because the leadership is not there, there is a lack of leadership.

Hon. Thomas Siddon: And if the regulations need to be changed to improve efficiency, if we have to have consolidated administrative agreements with the provinces, I am quite concerned about the fox in the henhouse—that is, proponent ministries running their own environmental reviews—because they are in a conflict of interest, a clear conflict of interest.

The bottom line of my message, if this is my final word, Mr. Chairman, is to take your time and do it right. To bundle all of this into a budget bill, with all its other facets, is not becoming of a Conservative government, period.

The Chair: Thank you very much.

Mr. Nicholls, your time has expired.

We now go to the last questioner of our first round, for five minutes.

We'll start with Ms. Rempel. I believe you're sharing your time with Mr. Trost.

Ms. Michelle Rempel: That's correct.

I'd like to go to Ms. Schwann for a moment and go back to some of the proposed changes to the Fisheries Act.

Within the proposed changes, there is a “duty to notify” section. Are you familiar with it?

Ms. Pamela Schwann: I am generally, yes.

Ms. Michelle Rempel: It legally requires proponents to inform DFO in the event of serious harm to fisheries—a logical, reasonable step that should always have been taken, if such unfortunate circumstances were to occur.

Do you see this as a positive development?

Ms. Pamela Schwann: I think it's a very common-sense approach to responsible resource development, which this is all about.

Ms. Michelle Rempel: We talked a little bit with your national mining association about how, sometimes, projects have windows to market that need to be assessed. The timeliness and predictability of timelines could help to promote that, but also ensure that there is rigour in the environmental review at the same time.

Do you foresee any of your member companies lessening their environmental planning or lessening their environmental standards because of the changes in this regulation?

● (2025)

Ms. Pamela Schwann: No, that's impossible. The environmental assessment process is a planning document. There are a lot of other licensing and permitting activities that are ongoing after an environmental assessment is done. There is no lessening of standards, because you would be non-compliant with your licence and would have your licence revoked. So I don't see that.

I also don't subscribe to the theory that you can't have development and responsible environmental stewardship. They aren't mutually exclusive.

Ms. Michelle Rempel: Thank you.

I'll hand the rest of my time to Mr. Trost.

Mr. Brad Trost (Saskatoon—Humboldt, CPC): Thank you, Mr. Chair.

I was very interested, Ms. Schwann, listening to your remark about the story you were telling about the mining company that had been approved by the provincial government, because of the tailings pond issue.

You referred to that as an economic example. I remember this case very well, because I was one of the first MPs to deal with it. It was actually an environmental problem, wherein the provincial environment department wanted the mining company to go in there and work on the tailings pond, but DFO didn't want them to go in, because it was fish habitat. So DFO's declaring of an old tailings pond as fish habitat was allowing leaking of contaminants into the environment, and DFO was in fact holding back environmental progress.

I listened to Mr. Siddon's remarks that a minister should really be on top of his file. I know that the minister at that time was on top of his file, and he was handicapped in that situation by the legislation. He agreed that it would be better to go in and clean it up environmentally. The irony is that DFO was holding back environmental protection in this area and the minister understood that, and yet the provincial environmental body wanted to clean this up.

Is my recollection correct on that? Effectively, the provincial environmental body was pushing for a cleanup, which would have resulted, had this mining company been allowed to proceed with its project.

Ms. Pamela Schwann: I can't recall the exact details. I don't know whether I would classify it as a cleanup, but certainly it was a tailings facility licensed by the provincial government. If there had been a breach, they would have wanted to remedy it, but because it was fish habitat, they actually—

Mr. Brad Trost: They would have been on the hook the moment they were allowed to start; whereas, until they were allowed to do their project, this old tailings pond could just leak into the environment left, right, and centre, as DFO was content to have it do.

Ms. Pamela Schwann: I don't know that I would agree it was leaking into the environment, but....

Mr. Brad Trost: I was very involved in that file, so....

Here's one last thing. You mentioned a little disappointment on the uranium file, and I share that. Are there any other practical suggestions you may have that could enhance the regulatory process—without, of course, weakening environmental protections—that we have not yet included in this legislation? Where are there areas in which this could be improved so that there could be more efficiencies, so that more resources could be devoted to serious environmental questions?

Ms. Pamela Schwann: There are probably two areas: making sure that time is spent on the designated projects list—

Mr. Brad Trost: On the...?

Ms. Pamela Schwann: The designated projects list, so that you're looking at the highest risk projects and are able to dedicate the resources that are required by them, rather than at some small projects.

We've had examples of projects that were actually of environmental benefit to an operation, but they still had to go through an environmental assessment process, at great cost.

The other thing would be to make sure that any substitution or equivalency process is manageable; that it's not more bureaucratic than the existing system. This means making sure that if there are equivalency provisions and substitution provisions, they are actually of benefit and are doable—making sure that the details in the regulations don't make things too burdensome.

The Chair: Thank you very much, Mr. Trost.

Colleagues, this brings an end to the first—

Mr. David Anderson: Chair, I have a point of order.

I think it's important that we understand what's in the information here. Clause 150 does not talk about the minister designating to anyone other than another minister, and I think that's important to understand. I hope we haven't been confused by that.

Secondly, in terms of the fines, certainly there are some first offences that start at $5,000, but it should be pointed out that they go up to $12 million. I think there needs to be some clarity on that as well.

● (2030)

The Chair: Mr. Anderson, I don't believe this is a point of order. If you want to explore it in further lines of questioning with other witnesses, I would encourage you to do it that way, as a matter of debate.

Mr. David Anderson: Actually, accuracy should be important.

The Chair: Accuracy is important, and it needs to be explored through discussion and debate. Disagreement about the facts is not a point of order. It has to be a procedural discussion.

Colleagues, thank you very much for your time.

Mr. Wojczynski, Mr. Siddon, Ms. Schwann, Monsieur Simard, Monsieur Tremblay, thank you very much for coming here tonight.

We're going to suspend for a few minutes and resume with the second part of our meeting.

● (Pause) ●

● (2035)

The Chair: Okay, thank you very much, colleagues. We are going to resume with the second panel for tonight's meeting. Joining us as our witnesses are: from the Corporation of the District of Kent, Mr. Lorne Fisher, councillor; from Ecovision Law, Mr. Stephen Hazell, senior counsel; from MiningWatch Canada, Mr. Jamie Kneen, communications coordinator; from the Canadian Taxpayers Federation, Mr. Gregory Thomas, federal and Ontario director; and from the Northwest Territories Chamber of Commerce, Mr. Hughie Graham, president, whom I don't see at the table right now, but I'm hoping will join us shortly.

Without further ado, we're going to proceed in the order in which the witnesses appear on the orders of the day for this committee. We're going to start with Mr. Fisher, for up to 10 minutes, sir.

Mr. Lorne Fisher (Councillor, Corporation of the District of Kent): Thank you very much.

On behalf of the five municipalities from the Upper Fraser Valley of British Columbia—the City of Chilliwack, the District of Hope, the District of Kent, the Fraser Valley Regional District, and the Village of Harrison Hot Springs—I wish to extend our appreciation to the committee for this invitation to participate in the discussions of the changes to the Canadian Environmental Assessment Act, the Fisheries Act, and the Species at Risk Act, as proposed in Bill C-38.

We commend the federal government for taking these initiations to simplify and expedite the approval process for major projects that have environmental implications. As communities that facilitate the corridor for major transmission lines, pipelines, both major railway lines, and the Trans-Canada Highway, we are well aware of the public hearings, etc., that major corporations—such as BC Hydro, Fortis, etc.—have to satisfy in order to expand their services to our communities and to the province of B.C. as a whole.

This is a stringent approval process; however, the efficiency of the present system could be improved. It is hoped that the changes proposed in Bill C-38 will achieve that objective. Time is money, and lengthy delays in the approval process for major projects can result in lost opportunities and can be harmful to the overall economy of our country.

However, of immediate concern to our communities in the Fraser Valley are the proposed changes to the Fisheries Act and the Species at Risk Act. The Fraser Valley is a flood plain known for the very high productivity of its soils for forage production—five or six harvests per season—and its specialty crops of fruits and vegetables.

Because of relatively high seasonal rainfalls and high water tables associated with the annual freshet from the Fraser River, it is essential for the productivity of these soils that they be drained effectively. This requires the annual maintenance of a network of engineered ditches that have been constructed to maintain the quality of these soils. The farmland and the surrounding forest and mountains are also drained by natural streams and sloughs that are legitimate fish habitat, and by the Fraser River itself, which of course is habitat for salmon and other species of fish such as the sturgeon.

The conflict between the farmers and the municipalities on the one hand, and the Fisheries Act and the Department of Fisheries and Oceans personnel on the other, is DFO's insistence that agricultural drainage ditches are fish habitat and therefore subject to the DFO directives based on the Fisheries Act. Therefore, obtaining approvals for annual drainage maintenance and routine culvert and bridge repair has become a major expense for the municipalities and a source of frustration for the farmers.

For the District of Kent, whose major industry is agriculture, 80% of the drainage costs are due to direct and indirect costs of getting approvals and permits from DFO. The proposed changes in the definition of fish habitat, as stated in Bill C-38, would limit fish habitat to streams, sloughs, and rivers, which are the habitat of the commercial fishery, and hopefully they will exclude agriculture drainage systems from being designated as fish habitat.

Similarly, if routine ditch maintenance is considered to result in the destruction of fish habitat, the municipalities whose ditches were involved must have provided compensation in the past, in the form of establishing new riparian areas that must be maintained in perpetuity. This requirement may be justified if natural streams are involved; however, it should not be required for ditches that are dry for a significant portion of the year. It is our interpretation that the proposed changes in Bill C-38 would eliminate the requirement of this form of compensation when drainage ditches are cleaned.

The Fraser Valley has a moderate climate, which has resulted in the identification of some waterways as home to species that are rare in Canada, such as the Salish sucker, Nooksack dace, and the Oregon spotted frog—which obviously belongs in Oregon.

● (2040)

That was not a problem for the municipalities until the Salish sucker and the Nooksack dace were declared endangered species by the federal Species at Risk Act, and the Oregon spotted frog was designated endangered by the British Columbia Ministry of Forests, Lands and Natural Resource Operations. These two species, the Oregon spotted frog and the Salish sucker, share the same habitat, except the Salish sucker prefers deep, shady, cool waterways, and the Oregon spotted frog prefers sunny, grassy ponds.

The frustration for municipal staff is that they may get a permit for drainage maintenance from the federal DFO, only to have it forestalled by the staff of the provincial ministry. This type of conflict does not appear to have been recognized in the proposed changes to the Species at Risk Act. For the species that occur in only a very limited area of one province, it is suggested that their designation as a species at risk should be left up to the province that they call home rather than up to the federal act.

In the past year, DFO staff have been very diligent at holding public hearings to discuss with farmers, industry, and municipal staff the implications of establishing a critical habitat for the Salish sucker in the Fraser Valley. The maps of these designated areas of critical habitat were provided in the draft of the proposed recovery strategy for the Salish sucker. The suggested restrictions on the use of agricultural land and the management and development of stream-side urban properties, as occurs in the village of Harrison Hot Springs, are major restrictions on the value and the use of land.

Of greater concern, in spite of many requests from the public, DFO could not or would not provide a cost-benefit analysis for the establishment of this critical habitat nor would it commit to a population for the species deemed as suitable. In fact, the strategy states that it is likely that the species will remain at risk for the foreseeable future. There are changes to the Species at Risk Act, which are proposed in Bill C-38, that should eliminate some of this degree of uncertainty.

A number of issues have been identified in these very short introductory remarks. We look forward to further discussions related to the suggested changes in the legislation concerning both the Fisheries Act and the Species at Risk Act. Thank you.

● (2045)

The Chair: Thank you very much, Mr. Fisher.

We now move on to Mr. Hazell for up to 10 minutes, please.

Mr. Stephen Hazell (Senior Counsel, Ecovision Law): Thank you, Mr. Chair. I appreciate the opportunity to appear before the committee this evening on a very important matter for Canada's environment and for sustainable development.

My message to the committee is this: less haste, more speed. The Canadian Environmental Assessment Act, by virtue of Bill C-38, will be repealed in total. It's not a tweak. It's not just about streamlining and timeframes, as was suggested in the budget documents. You are repealing an entire federal statute, and you are replacing it with another that includes a number of new concepts that have not been tested.

Many of the recent comments by several ministers have focused on the perceived need to streamline environmental assessments, such as by authorizing the substitution of federal reviews by provincial reviews, and to ensure that panel reviews are completed within reasonable timeframes. While Bill C-38 proposes many important and mainly unwise amendments to achieve streamlining and certainty in panel review timeframes, these are far from the most important changes to environmental assessment proposed in Bill C-38.

In the time I have available I want to touch on three main areas of concern that I have with respect to the bill.

The first thing is that the bill would essentially eliminate the legal requirement to carry out project environmental assessments. This will mean far fewer assessments and much narrower assessments of those project assessments that do occur. How does this work? Right now under the Canadian Environmental Assessment Act all triggered federal projects require assessment unless they've been excluded by regulation or by operation of the statute. Now, only projects that have been designated pursuant to a regulation would be subject to the act.

Let me pause here to say that we have not yet seen a draft of this regulation, although we do know that the Canadian Environmental Assessment Agency has been working on it. It is absolutely imperative for this committee to see that regulation before signing off on anything.

We don't know how long or how short this list of designated projects will be. We understand that the government is making use of the comprehensive study list regulations, the current regulations, as a template for that. At the moment, the Canadian Environmental Assessment Act registry lists 39 comprehensive studies being undertaken and 11 panel reviews. So a fairly small number of comprehensive studies and panel reviews are being undertaken. Under the new law, roughly 4,000 environmental-screening assessments being undertaken annually under CEAA would be eliminated.

There will be a fairly small number of so-called designated projects that will be subject to the act. But that doesn't mean they will actually be assessed for their environmental effects. Proposed paragraph 10(b) of CEAA 2012 gives the Environmental Assessment Agency the authority to make the determination that these designated projects not be subject to environmental assessment. In effect, there could be very few environmental assessments of projects undertaken pursuant to the new law.

Scott Vaughan, the parliamentary commissioner, was here yesterday. He estimates that 20 to 30 environmental assessments will be undertaken under the new law. I would suggest that this amounts to an abandonment by the federal government of environmental assessment. Thus the new bill could well be an empty vessel, with very few environmental assessments actually being carried out.

If this is the case, and if the new bill is applied to a mere handful of projects annually, it really doesn't matter what the rest of the legislation says with respect to timelines, substitution, equivalency, and public participation. The fact is that there's going to be very little environmental assessment activity happening at all.

My second point relates to the abundance of discretion in the bill.

● (2050)

I would say that CEAA 2012 is not so much a law imposing requirements for the conduct of environmental assessments as it is a statute enabling the exercise of discretion by ministers and responsible authorities. The new bill provides broad discretion to the agency and the environment minister to determine that the environmental assessment of a project is not required, to scope the factors to reconsider the environmental assessment, and to determine whether a provincial project is “an appropriate substitute” for the federal process.

This will inevitably result in the politicization of environmental assessment and consequent delays. Right now we have clear rules. We're substituting those clear rules with discretion in the hands of the agency's responsible authorities and the minister.

For example, assume that aggregate quarries on the scale of the proposed Melancthon quarry in southern Ontario are listed as a designated project by regulation. The first step of the proponent of such a quarry could well be, through obtaining an Ottawa lobbyist, to pressure the agency and the minister to exercise the proposed paragraph 10(b) discretion to ensure that no environmental assessment is required, or failing that, to exercise proposed subsection 19(2) discretion to scope the environmental assessment of the quarry down to a stream crossing.

This sort of thing does go on, I'm afraid.

My third point relates to increased litigation risks.

There will be increased litigation risks because we have a brand new piece of legislation with many new concepts that are being incorporated using terms such as designated project, environmental effects, interested party, appropriate substitute. This legislation has been developed in secret—I would suggest in haste—without the benefit of other experts, whether from industry or from civil society, and that means there are likely going to be many mistakes.

I note that the cone of silence approach that has been taken with respect to this bill is strikingly different from that undertaken with respect to previous environmental assessment laws. The original Canadian Environmental Assessment Act in 1992 was preceded by several years of public discussion and three different bills tabled in Parliament.

The major amendments to CEAA in 2003 were also preceded by a public consultation led by the agency, as well as the House of Commons environment committee hearings.

In addition, there was a multi-stakeholder process called the regulatory advisory committee, which had industry, environmental groups, first nations, provinces, and federal departments that worked over draft regulations to ensure they were right, before they came into force.

Unfortunately, we have none of that now. I do suggest that the use of a multi-stakeholder body would be an important way to get this legislation right. The government does have some record in this. I've been a part of a multi-stakeholder group that has been working on the air quality management strategy, which has had industry representatives and environmental groups, as well as provincial governments led by the Government of Alberta, and we're very close to a national deal that will reduce smog emissions in this country as part of a multi-stakeholder process, not a unilateral process.

I've only touched on a few of the many grave concerns that I have with this legislation, and certainly this subcommittee faces a significant challenge in trying to understand the bill, first of all, understand the comments of witnesses, and propose amendments that could mitigate the, frankly, devastating impacts that this legislation will have on Canada's natural environment.

Less haste will yield more speed and a better law.

My recommendation is that this subcommittee remove the proposed CEAA 2012 from Bill C-38, and propose to the overall finance committee that it be referred to the House of Commons environment and sustainable development committee for its review. I would further suggest that this review be done in collaboration with some multi-stakeholder group.

I would have suggested the National Round Table on the Environment and the Economy, but obviously that's not possible.

My final comment is that I want to repeat something I said before.

● (2055)

I think it's really important that this committee have that draft designated projects regulation in front of it before you wind up your hearings. I believe that the committee should ask the Minister of the Environment for that regulation before you wind up your process here.

Thank you very much, Mr. Chair.

The Chair: Thank you, Mr. Hazell.

We'll go to Mr. Kneen, for up to 10 minutes, please.

Mr. Jamie Kneen (Communications Coordinator, MiningWatch Canada): Thank you, Mr. Chair, and thank you for the invitation.

I am here today as a representative of MiningWatch Canada, a national non-governmental organization—not a charity—and as co-chair of the environmental planning and assessment caucus of the Canadian Environmental Network, which brings together some 60 groups and environmental assessment experts from across the country.

I'm here to urge you to ensure that the environmental provisions of Bill C-38 are given proper consultation and debate.

Part 3 of C-38, with which we are concerned today, is seriously flawed, and in our view, to allow it to proceed without very major amendment would be irresponsible. With all due respect to the experience and knowledge of this committee, there is simply no way of adequately addressing part 3 as part of C-38. These provisions must be separated and debated on their own, and if need be, removed and resubmitted to a new legislative process.

The government is arguing that the new Canadian Environmental Assessment Act, CEAA 2012, and related measures must be passed as part of the budget process, because they are urgently required to protect and promote investment and development.

The urgency is clearly manufactured. The existing Canadian Environmental Assessment Act was referred for review by Parliament two years ago. The government did nothing for 16 months, and it had actually dropped efforts by the minister's own regulatory advisory committee, as well as the caucus, to prepare for the review going back several years before that.

Just as importantly, these measures are more likely to exacerbate uncertainty and delay, which will ultimately put development projects at risk and drive away investment.

I would like to focus on three key problems in the new act: the abdication of federal responsibility over the environment; the abandonment of the principles of sustainable development and the integration of those principles into decision-making; and the serious diminution of public participation and the opportunity to fulfill government's obligations towards aboriginal peoples. I am not here to speak for aboriginal peoples, and I will not focus extensively on those issues, but both MiningWatch and the caucus have serious concerns in this area.

In place of a positive assertion of a federal role in EA, the act explicitly limits federal authority to specific regulatory jurisdiction, as in proposed paragraph 5(1)(a). This flies in the face of the Supreme Court's rulings in Oldman and MiningWatch, and ensures that federal environmental assessment will have no meaningful relation to ecological or social reality. This will make it all but impossible to establish any kind of consistent national practice.

The substitution and equivalency provisions do precisely what the caucus and others have studied and warned against. It will create a patchwork of inconsistent EA application, both within the federal government and between federal and provincial processes. Rather than seeking to use the federal regime as a backstop for coordinated and harmonized processes, it is to be broken up among agencies with different mandates, structures, and capacities—the Canadian Environmental Assessment Agency, the NEB, and the Canadian Nuclear Safety Commission—and will be further devolved to provincial and land claims mandated processes that have little in common with each other. The contrast between the federal and the B. C. assessments of the Prosperity mine project, which should have undergone a joint review, provides an excellent case study.

By weakening the federal role and splitting up federal assessments among several federal agencies and provincial and territorial EA processes, CEAA 2012 actually balkanizes EA across about 19 very different processes. It's certainly no longer a one-window approach. And given the weakness of its transboundary and regional assessment provisions, it's also doubtful that it will result in having “one project, one assessment”.

In terms of integrated decision-making, while the designated project list approach to triggering an environmental assessment is not necessarily a bad thing, the way it is used in this act is problematic. It's one thing to focus assessment efforts on larger projects with potentially more significant impacts, but in our view, it is a mistake to do so without making any effort to ensure that there are mechanisms to ensure that smaller projects are tracked, monitored, and, as necessary, assessed. At the same time, rather than integrating sustainable development, the screening process and the layers of discretion on whether an assessment will actually be undertaken and what its scope will be will tend to relegate environmental assessment to the margins of decision-making, both for projects and for regulators.

In addition, any mention of strategic environmental assessment—the assessment of policies, plans, and programs—has disappeared completely.

● (2100)

With regard to public participation, that is a key element in environmental assessment. Here, it is curtailed by the restricted number of projects being assessed, diminished opportunities for public participation, and artificially imposed timelines. If you recall, the Supreme Court did back MiningWatch in its decision on the Red Chris mine review, which was based on the guarantee of public participation in comprehensive studies under the 2003 CEAA amendments.

The new act promises public participation, but it provides no criteria and no guarantee that this promise will be carried into substitute processes. It contemplates participant funding only for panel reviews. Regardless, the arbitrarily compressed timeframes imposed under the new act will make meaningful public participation almost impossible. It's important to note that while the act imposes strict limits on the time available for public involvement and specifies only limited options for federal agencies to extend their time, it places no restriction whatsoever on the time a proponent may take in responding to information requests, or to change and resubmit project plans, which they do quite regularly.

In addition, and in combination with the inconsistency created by substitution and equivalency provisions, artificial timelines will make it very difficult for aboriginal communities to fully participate in environmental assessments, in recognition of their constitutionally protected rights. In short, even giving the most generous benefit of the doubt to both the formulation of the act's absent schedules and regulations, and the application of ministerial and bureaucratic discretion—in the general absence of useful criteria, I might add—the key features of this act cannot produce robust, effective, and efficient environmental assessment.

In its key aspects, it makes the process significantly less predictable and consistent. It limits its utility as a forum for establishing a social licence to operate and for fulfilling the Crown's obligation to obtain the free, prior-informed consent of aboriginal peoples for development projects affecting their lands and livelihoods.

The public has an expectation of fair treatment before the law. I would not be the first to note that in the absence of a public process that is perceived to be fair and that allows for the fulfilment of aboriginal peoples' rights, people will tend to take matters into their own hands. Lawsuits and direct action will also create greater uncertainty and unpredictability, and can reasonably be expected to more than counter any anticipated efficiency gains.

It's hard to avoid the conclusion that faced with complex legal and jurisdictional questions, and under pressure from the provinces and some industry sectors, the government has chosen to basically throw up its hands and walk away from all but its essential legal obligations. That is simply not acceptable.

Thank you.

● (2105)

The Chair: Thank you very much, Mr. Kneen, for your presentation.

We now move to our final presenter.

Mr. Thomas, for up to 10 minutes, please, sir.

Mr. Gregory Thomas (Federal and Ontario Director, Canadian Taxpayers Federation): Thank you, Mr. Chairman.

My name is Gregory Thomas. I'm the federal director of the Canadian Taxpayers Federation. We are Canada's oldest and largest taxpayer advocacy group, founded in 1990, with 72,000 supporters across the country.

We appreciate the invitation to participate in these hearings and will welcome your questions.

I think it's no secret that the process of environmental assessment is not a popular one in Canada on any side. Mr. Kneen has a copy of the comparison of the British Columbia and the federal assessments of the Prosperity mine, which is a $1 billion project that would have generated tens of thousands of jobs in British Columbia. The federal government blocked that project, yet everyone who participated in the whole process was unhappy with it, regardless of the outcome. It was long, time-consuming, and costly for the people who were trying to build the mine; and costly for the people who were trying to oppose it.

The universal belief at the end was that the key issues hadn't been addressed, and that as a civil society we hadn't come together to figure out how to build that mine in a way that would not affect the environment for all generations. So it was a long, costly, and frustrating process. What we recognize as taxpayers increasingly is that environmental assessment processes attract the involvement of people who bring nothing new to the table. They bring nothing new in the way of facts, new information, research, or constructive proposals on how we can move forward and protect the environment, create jobs, and work together.

So the process is broken and I believe the amendments to the legislation contained here represent, at the very least, an attempt by a government in Canada to address the fact that the process is broken and serves people very poorly.

I will speak to what I believe is an overlooked element of environmental assessment that the government needs to incorporate into its future process, and that is the whole issue of quantifying damage and of quantifying the costs, both of legislation, regulation, and new development. We know that in the case of the Prosperity mine in British Columbia there were costs imposed on the environment, on the traditional hunting and fishing, on the aboriginal peoples' traditional territories, and on the environment itself.

We also know there are massive financial benefits that could be extracted to offset those costs. But what we found was that in a sea of inflammatory rhetoric, there was insufficient will on the part of all the players to create a situation that would lead to increased prosperity for everyone and protection of the environment. There was a win there, and collectively, we weren't able to work to that win. Collectively, at the end of the road a tremendous amount of public money had been spent, and there had been no constructive outcome.

A similar example is the Mackenzie Valley pipeline.

● (2110)

I think it's fair to say there's quite a bit of public support for the Mackenzie Valley pipeline in 2012, and yet processes have ground on so long that the natural gas price will no longer support the construction of the pipeline. So you have a situation where communities in the Northwest Territories are converting from natural gas back to diesel fuel, because they no longer have access to supply.

We've seen historically where a failure to quantify the economic value of the way we manage natural resources has had catastrophic outcomes, if you look at the Newfoundland cod fishery, or as was discussed the night before last in this committee, the Great Lakes fishery. Decisions were taken piecemeal to destroy fisheries habitat and no one quantified the value of what was being destroyed.

I'm happy that Mr. Fisher is here from the Upper Fraser Valley, because we have a large number of supporters who live in the municipalities he discussed. I think possibly there was something in it when they sent someone named Fisher to represent the farmers.

In that situation, there's been no effort to quantify the costs and benefits of the species at risk protection initiatives that are being undertaken in the Upper Fraser Valley. Canada has one of the most poorly developed systems of recognizing the damage that's done to individuals by government regulation. Whereas in Europe, both at the state level and the European Union level, the regulations that are being unleashed on the farmers in the Fraser Valley would automatically trigger massive financial compensation, in Canada we can basically neutralize farmers' land, flood it, leave it under water. These people are subjected to hundreds of thousands of dollars of costs and there's no compensation.

Mr. Fisher referred to the Nooksack dace and the Salish sucker, which are identified as species at risk. In the case of these species, activist groups actually went to court to force DFO to develop plans to protect these species. So it wasn't even an initiative originally of the Government of Canada; they were forced into it by their own legislation. Because there is no way to quantify the massive costs of the protection plans that are being proposed, and the costs to individuals aren't even considered in our legal system, you get environmental initiatives with massive, outrageous, exponential costs on individuals.

One of the most hilarious things about this particular plan that Mr. Fisher is here to talk about is that one of the original and largest habitats for the Salish sucker is on the Little Campbell River, where the species was extirpated approximately 30 years ago. Little Campbell River is in the middle of the largest regional park in greater Vancouver, Campbell River Park. Given the choice of setting up a program in a regional park that would actually have an on-budget impact—the Government of Canada would have to go to taxpayers and say, "We're taxing you and spending hundreds of thousands of dollars to restore this obscure fish to a thriving status"—instead it's costing hundreds and hundreds of thousands, possibly even millions of dollars in damage to individuals to reclaim farmers' ditches for the same purpose. This is a perverse thing that we hope this committee and this government will put to a finish.

Thank you.

● (2115)

The Chair: Thank you, Mr. Thomas.

To the witnesses, we are going to now proceed with rounds of questions and answers. I would hope you would have your earpieces ready. Some members of the committee will choose to use either of the official languages. If you operate in only one language, I don't want you to be caught off guard.

We will start with our first round of seven minutes for questions.

Mr. Anderson.

Mr. David Anderson: Thank you, Mr. Chair.

I want to thank the witnesses for being here tonight.

Mr. Thomas, in one of your news releases you used the word overzealous. You talked about the overzealous interpretation of the rules by DFO. Do you think the situation we're talking about here is just overzealousness, or do you think that we actually need to make these changes to the legislation in order to make the kind of changes that you're talking about?

Mr. Gregory Thomas: I think what you experienced is fisheries officers refusing to embark on some of these overzealous adventures. Activists groups used the legislation to force the government into undertaking things like the Salish sucker initiative. So, yes, we believe that changes to the legislation are absolutely essential.

Mr. David Anderson: Do you think that a drainage ditch, for example, in my part of the country, which is dry virtually the entire year, should be put on the same level as the salmon fishery in British Columbia, or that a culvert that's being replaced in a municipal road is similar to a pipeline being put under a river? Should they be treated exactly the same?

Mr. Gregory Thomas: No. I think the environment movement and thoughtful parties on all sides should actually quantify them by asking how vital the culvert is, how critical it is, how many fish are being impacted, and whether there is a cheaper way to do it that has less effect.

As I mentioned, in the European Union, if you essentially expropriate a farmer's ditch.... These farmers actually came over from Europe in 1910, and they were invited by Canada to drain the land in the Fraser Valley. So if they're affected, and there's going to be massive costs to them, then there should be compensation in Canada as there would be in other parts of the world.

Mr. David Anderson: You had a farmers' gathering about a month ago, I understand. I'm just wondering, can you tell us specifically what interests and demands the farmers were making there? What did they see as the major problems?

Mr. Gregory Thomas: What they saw was that they're actually closer to the ground—pardon the pun—and they know how their ditches operate. They know when the fish run in them, and they know effective ways to manage their own ditches better than the fisheries officers and better than the environmental activists who tromp out there occasionally every few years to tell them what to do. Their point is that their lands are being flooded, that the quality of their acreage is being affected, and that their ability to grow food and to support the work that they came to Canada 100 years ago to do—and were invited by us to do—is all being undermined by people who don't do a very good job, don't quantify the costs and benefits of the programs that are being undertaken, and do not prove the value of the program they're proposing to foist on everyone versus what it's costing us all.

Mr. David Anderson: Mr. Fisher, you talked a bit about loss of productivity. Do you have some examples that you can share with us of farmers having run into the bureaucracy in ways that you think are inappropriate, given the legislation and what it should be doing?

Mr. Lorne Fisher: As I pointed out in my opening remarks, we have to keep water tables down in order to maintain productivity. Now, there are areas, primarily for forage crops, that we haven't been draining properly. I predict that they're going to go down at least 50% in their potential productivity with regard to yield of forage from those lands previously compared to what they are now, because we haven't been getting regular maintenance of the drains. It's a relatively small amount of land, and I think that's why it's so important.

● (2120)

Mr. David Anderson: Can I ask what happens, then, if you're not allowed to drain and you're just forced to leave the drainage ditches the way they are, and they become overgrown? What's required of them?

Mr. Lorne Fisher: The drainage ditches will definitely become overgrown. Again, because we have such a lovely climate, plants grow pretty fast. Weeds grow pretty fast. Reed canarygrass grows faster than anything, and they require cleaning on an annual basis, particularly if we just hand clean. DFO staff, and certainly the Ministry of Environment for the provincial government, demand that we hand clean areas that should be machine cleaned in order to make them effective.

Mr. David Anderson: So you have a man-made environment that you can't touch, and then it's constantly changing.

Mr. Lorne Fisher: Yes. These are engineered ditches, for the most part.

Mr. David Anderson: The FCM can't be with us tonight, but they have a statement out that says that reducing the time municipal employees are forced to spend filling out forms and waiting for federal approval, through changes to the Fisheries Act, will make it faster and less expensive for local governments to perform routine public services.

Is that something that resonates with your municipality? Do you see a reduction in bureaucracy so that your time can be better spent? We've had some witnesses who have said clearly that the environmental assessment program here is not going to change the outcomes, but it's certainly going to change the process and make it much smoother, and in that case it will make it much easier for people to deal with.

Mr. Lorne Fisher: I would hope that this would be part of the results of these changes, that they would speed things up.

We've recently gone through an improvement of the breakwater on Harrison Lake, with the combination of the two municipalities involved. We had a very difficult job getting approval of it through DFO. It took about three years to finally jump through all the hoops, because it was fish habitat.

We did some very special things with respect to making sure that we had washed gravel going into the dike and for the breakwater, but we really didn't get progress until we said, “This breakwater is dangerous; it has dropped below the water levels when the lake is high. We have a sign, but sooner or later somebody's going to run a boat up on top of it and have some serious....”

It took that type of threat before we could finally move them forward.

The Chair: Thank you, Mr. Anderson.

Mr. David Anderson: I think I still have some time, Mr. Chair.

The Chair: No, my clock says seven and a half minutes, Mr. Anderson.

Thank you very much.

[*Translation*]

Ms. Quach, you have seven minutes.

Ms. Anne Minh-Thu Quach: Thank you, Mr. Chair.

I want to thank the witnesses for joining us. I will speak in French.

I have several questions for you, Mr. Hazell, but I would like to begin by putting certain information into context. I think there has been a lot of misinformation in the discussions we have heard today and over the last few days.

Much has been said about efficiency, about saving money. People have said that it is impossible to associate saving money with sustainable development. However, the environment commissioner says the opposite, as do several experts, including yourself.

Wouldn't it be preferable to invest in environmental protection and prevention, instead of investing in healing and decontaminating sites?

You pointed out a paradox. It is constantly being mentioned that environmental assessments are too long and costly, and that there are many delays. However, you said that politicizing environmental assessments and giving the provinces responsibility will lead to more delays. Therefore, I assume this will lead to risks and higher costs.

[*English*]

Mr. Stephen Hazell: Thank you for the question.

The first thing I would say is that environmental assessments cost money, but a lot of times the amount of money they save is tremendous. My colleague made reference to the Mackenzie gas project. He says there's lots of support for it. It's unfortunate that it's not actually supported by the proponents.

Imperial Oil and Shell have saved billions of dollars in lost profits by not proceeding with that project. If they had proceeded with that project—and everyone understands that this process took too long—they would be trying to sell natural gas at $6 into a market where they could only get it for $2. They'd be losing money hand over fist. What the environmental assessment process gave them, gave us all, was a better understanding of the costs of building the project. Part of the pipeline link was through country with no roads, with permafrost, with difficult building conditions. I don't expect Exxon Mobil to thank me for saving $1 billion, but I live in hope.

My colleague talked about the need to cost out the regulatory expenses. That's fine. I think by and large we do that. There are two things to consider, though. The first thing is that we have to look at the economic benefits of the ecological services provided by the boreal forest, in the case of the Mackenzie Valley. Having that boreal forest there and those boreal wetlands provides enormous benefits to Canada—absorption of carbon from the air, fresh water, etc. Those sorts of metrics need to be incorporated as well.

All of that's a good idea, but the effect of this bill is exactly what Mr. Thomas is saying shouldn't happen. We won't be able to do any of that work, because the effect of this bill is to more or less shut down the federal environmental assessment effort. It's not about streamlining or timelines. It's about a massive reduction in the capacity of the federal government to understand what development projects do to the environment and the communities.

● (2125)

[*Translation*]

Ms. Anne Minh-Thu Quach: Thank you for your passionate answer.

I would also like to know whether you think Bill C-38 takes into account cumulative effects. If not, why is it important to take into consideration the cumulative effects of large projects?

[*English*]

Mr. Stephen Hazell: One of the great advances of the Canadian Environmental Assessment Act in 1992 was that it required the assessment of cumulative environmental effects. That was extremely important: it tried to get at what are admittedly tough problems. Take the tar sands region. How do you say to the first company trying to do work on the tar sands that they have to look at everything that's going to come on downstream? The effects might not have been that great for the first project, and the second project might not have been that great either. But when you add them all up, what you're left with in the tar sands region in northern Alberta is significant air quality problems, a significant risk of failure of tar sands dams, which could wipe out the Athabasca River.... So looking at cumulative effects is important, but it's really difficult.

Under this legislation, that's basically out the window. The capacity of the federal government to do environmental assessment is going to be so dramatically reduced that there will be no serious effort to do cumulative effects assessments. We have no evidence to support the notion that the provincial governments are going to pick up that effort, that the provincial governments are going to somehow replace this lost capacity. Certainly, the provincial premiers, when they have spoken about this bill, have made no indication that they would be ramping up their environmental assessment efforts.

Normally, when the federal government is downloading responsibilities, the first thing provincial governments do is ask for more money. I haven't yet heard Premier Clark or the other premiers ask for more money for environmental assessment.

[*Translation*]

Ms. Anne Minh-Thu Quach: My next question is for Mr. Kneen.

You talked about the drop in public participation. What do you think about simply limiting debates to stakeholders?

[*English*]

The Chair: Quickly, Mr. Kneen. We only have about 30 seconds left.

Mr. Jamie Kneen: The specific limitation applies to National Energy Board processes, as far as I can tell, in the legislation. Within the range of proposed assessment processes, one of them limits the definition of public participant to someone with a direct interest, which is something that has been in place and is highly controversial in Alberta. It's been proposed at the federal level at different times and rejected because it's simply unworkable as a standard.

● (2130)

The Chair: Thank you very much.

Thank you, Ms. Quach.

We now move on to Ms. Duncan for seven minutes, please.

Ms. Kirsty Duncan: Thank you, Mr. Chair.

Thank you to all the witnesses.

I'd like to begin with Mr. Hazell. It can be a short answer. What do we know about the project list?

Mr. Stephen Hazell: We know nothing about it. Well, I have heard a rumour—and I couldn't put any more credence than that—they're working from what's called the comprehensive study list regulation, which is a current existing regulation, in terms of preparing the designated project list regulation. Nothing's been publicly released as yet that I'm aware of.

Ms. Kirsty Duncan: Thank you, Mr. Hazell.

Following up on that, what do we know about the thresholds or criteria that will be used to establish the project list? A short answer.

Mr. Stephen Hazell: Nothing at all; there's no information at all. I mean, it's...nothing at all.

Ms. Kirsty Duncan: Thank you.

In the fall of 2011, the environment commissioner examined how cumulative impacts were being considered in the oil sands region of northern Alberta. The audit found significant gaps in scientific data that is needed to determine the combined environmental effects of multiple projects in the same region.

I'd like it if you could expand on what you were saying to Ms. Quach. How are cumulative impacts going to be addressed under the new CEAA?

Mr. Stephen Hazell: My understanding is that in the new bill, the requirement to assess cumulative effects is still there for those projects subject to federal environmental assessment—and they may be, as I say, very few in number, although we can't say for sure. That's why I'm encouraging the committee to insist that the Minister of the Environment provide the designated projects regulation. It's difficult to say how much real work will be done in terms of cumulative effects assessment.

Ms. Kirsty Duncan: So just to be clear, it's going to be difficult to understand how much is going to be done in terms of cumulative impacts.

Mr. Stephen Hazell: That's right.

Ms. Kirsty Duncan: Terrific. Okay.

I'm going to continue there. Again, how will cumulative effects be carried out in light of substitution and equivalency to be handled by the provinces?

Mr. Stephen Hazell: Provincial environmental assessment processes typically do not look at cumulative effects. In fact, I'm not aware of any jurisdiction that requires assessment of cumulative effects amongst the various jurisdictions in Canada. In Ontario, for example, the environmental assessment process is really limited to public sector projects. It doesn't even include the assessment of private sector projects unless they were designated by the Minister of the Environment in Ontario.

When it comes to substitution by provincial processes for federal processes, certainly there will be no guarantees that the cumulative effects will be assessed at all. Further, the criteria in the new bill relating to substitution are extremely weak and, as Jamie Kneen has said, will result in a patchwork of environmental assessment regimes across the country.

One benefit of the Canadian Environmental Assessment Act over the past 10 years has been, basically, to serve to elevate everybody's game. The provincial governments have not been able to run away from environmental assessment because there was always a risk the federal government might come in and actually want to do an environmental assessment. So they couldn't run away and hide. I think the reason the provincial premiers are pretty happy is because, with the federal government off the scene, they can basically downsize their own environmental assessment regimes. I think that's a real risk in some jurisdictions.

● (2135)

Ms. Kirsty Duncan: Thank you, Mr. Hazell.

How will equivalency be determined under the new CEAA?

Mr. Stephen Hazell: I don't believe the term “equivalency” is actually used in the new act. In the substitution section I think it says the minister must form an opinion that the provincial process would be “an appropriate substitute”. In my view, that provides significant discretion on the part of the minister to make that determination. However, this is a very peculiarly worded section, because once the minister makes the determination that the process would be an appropriate substitute, the minister must, on the request of the province, approve the substitution of that process.

It's a very curiously worded provision. I think it follows to say it's badly worded. Please amend it.

Ms. Kirsty Duncan: Thank you, Mr. Hazell.

How will small projects be determined under the new CEAA?

Mr. Stephen Hazell: Small projects will not be covered under the new act. Under current legislation a lot of screening is done, mainly of small projects, but not all. There are some large projects that are subject to screening as well, but there's really no provision for assessment of small projects, unless one of two things happens. They either get on the designated project list regulation, which seems unlikely, or the Minister of Environment could conceivably designate a small project for environmental assessment if he felt it was appropriate.

Ms. Kirsty Duncan: We heard from the environment commissioner yesterday that some oil sands development, some mining, and some exploratory wells might be excluded. What would it look like if they were excluded from screening, and what are the risks?

Mr. Stephen Hazell: I fully expect that oil sands projects will not be included in the designated project list regulation. We'll see. I think the government will argue that Alberta has a perfectly good regulatory body, the Energy Resources Conservation Board, so let it do its work. We don't really need to have the federal government involved.

That may be the argument; I don't know. At the present time under CEAA there are typically joint panel reviews between the federal Environmental Assessment Agency and the Alberta ERCB for tar sands mines. There are a number of those under way. There is the Joslyn North project, the Pierre River project, and some others. They are independent panel reviews with hearings—a pretty good process.

The Chair: Thank you, Mr. Hazell. We have to move on. We've almost gone to eight minutes.

Ms. Rempel.

Ms. Michelle Rempel: Mr. Hazell, it's good to see you again. You were with the environment committee when we studied CEAA a few months ago.

Mr. Stephen Hazell: Yes.

Ms. Michelle Rempel: I want to go back to Madam Quach's questions.

You made a comment to the effect that you saved Exxon a billion dollars, but they're not likely to thank you for it. Could you walk me through the line of thinking on that again?

Mr. Stephen Hazell: Sure.

Imperial Oil and the other partners in the Mackenzie gas project invested hundreds of millions of dollars up front in the environmental assessment process, the regulatory process, and doing their field work for constructing the pipeline. It's very expensive stuff. Exxon Mobil was never that enthusiastic about the project, and even Imperial Oil never said they would build that pipeline. At the time—

Ms. Michelle Rempel: But I would like clarification on a comment you made that during the time the EA process occurred the price of gas went from roughly $6 to $2, so they would have been selling to a $2 market. Is that correct?

● (2140)

Mr. Stephen Hazell: Yes. That's more or less right. I think it's around $2 now, and it's been that way for some time.

Ms. Michelle Rempel: But the length of the EA process allowed the company to see that realization in price change and decide not to make the project. Was that correct?

Mr. Stephen Hazell: That's correct.

Ms. Michelle Rempel: We've been sitting through countless hearings here, and I've been sitting through the CEAA review for the better part of this summer. Here's the rub; the rub is right there. There's this disconnect between using environmental assessment to take away or affect industry's market decisions in their projects.

Yes, certainly, the price of gas reduced, and this was a boon for the company. However, one of the things that makes our country competitive is the ability to take risk and to move forward with business decisions based on market values in a timely process. That's what we're trying to get at here.

I really picked up on that story because it's so telling of some of the schools of thought that go into this. What we've been trying to show is we want to achieve that—

Mr. Robert Chisholm: Mr. Chairman, on a point of order, if I may.

The Chair: I've been hoping for a point of order.

Mr. Robert Chisholm: Thank you.

On this line of questioning Ms. Rempel is going after the witness with, I don't think there's any question she's twisting his words. When he made the reference to the Mackenzie Valley and the pipeline, he was talking about the irony. It was a little bit of irony when he was talking, and I believe it's a misrepresentation of what he's saying to continue to present his words in this fashion. I don't think it's very fair or, frankly, respectful.

The Chair: I appreciate that, Mr. Chisholm. I think Mr. Hazell is experienced enough to explain his position.

Madam Rempel.

Ms. Michelle Rempel: I would like to speak to this point of order.

I appreciate my colleague bringing this up because this is important. This is why I gave the witness the opportunity to clarify his comments on the front end, to make sure that what I had heard was correct. What we're talking about here is inserting policy on how government regulates industry into an environmental assessment process when what we should be talking about is how we balance rigour and environmental assessment while ensuring the project proponents have access to predictability and timeliness in the process.

And that's the point—

Mr. Robert Chisholm: Mr. Chairman, maybe Ms. Rempel should be having this discussion with the witness in a respectful manner, rather than trying to berate him.

The Chair: Mr. Chisholm, I'll let Ms. Rempel finish her thoughts. Respectfully, your interruptions are becoming quite more frequent.

Mr. Robert Chisholm: I'm speaking to a point of order.

The Chair: I don't hear a point of order here at all. If you two wish to have this debate through your lines of questioning with the witnesses, I would encourage you to do it that way, rather than usurping the rest of the members of this committee's time by having your own personal debate at the table.

Continue on with your line of questioning, Ms. Rempel.

Ms. Michelle Rempel: Thank you.

I don't mean any disrespect to the witness, because I do respect Mr. Hazell's knowledge and passion in this area, but I can't get over that comment because I think this is the hurdle that we as committee members need to address. How do we address process in environmental assessment, ensuring we're getting it right, rather than talking about whether or not we dictate how industry operates?

With that, I want to go into the environment commissioner's—

Mr. Stephen Hazell: Could I respond? I thought there was supposed to be a question.

The Chair: It's the member's time. I'm sure you're going to get an opportunity to respond, Mr. Hazell.

Mr. Stephen Hazell: I thought she was asking me a question.

Ms. Michelle Rempel: I just wanted to clarify your position.

The environment commissioner last night brought up the fact that CEAA is on record stating that 99.9% of the environmental assessments that happen right now are screenings, and that 94% of them would be characterized as having little to no environmental impact.

There was some testimony that came out through our review of CEAA, where I do have to push back that there hasn't been consultation on this, because we spent the better part of the fall session reviewing CEAA.

Mr. Hazell, you made a comment:

> At the federal level, I think we do need to focus on the big stuff and not sweat the small stuff so much, which unfortunately hasn't been a feature of CEAA so far. Not that there hasn't been a lot of good work done in the screening assessments—there has been, but we've learned some things. A lot of standards have been developed because of the work that has been done, such as, for example, no pipeline crossings over streams.

We also heard from the environment commissioner last night. He agreed that by reducing the amount of small projects that have little to no environmental impact, the 94% of them, we could allocate resources to review those big projects, the ones you're rightly concerned about.

How do you reconcile those comments with some of the things you've said tonight? How can you depart from that comment so much?

● (2145)

Mr. Stephen Hazell: It's completely consistent with the remarks and with my brief that I tabled with the House environment committee in the fall.

My point was that having mandatory legal requirements to conduct screenings of all of these various small projects may not be necessary. But if we take away those legal requirements, we need something else to ensure that those projects are promoting sustainability, as my colleague, Mr. Kneen, pointed out. That's the essential thing. We need to have some sort of process. There's nothing in this bill that deals with—

Ms. Michelle Rempel: But what about proposed sections 8 or 9?

The Chair: Thank you, Ms. Rempel and Mr. Hazell. Ms. Rempel, your time has expired.

Thank you very much for that. We have to move on. Members need to have an opportunity to get their questions answered.

Mr. Allen, for up to five minutes, please.

Mr. Mike Allen: Thank you very much, Mr. Chair. I appreciate the opportunity, and I appreciate the witnesses being here.

Mr. Hazell, I want to go back to some of the questioning, and some of the answers, from my colleagues across the way who talked about a lot of uncertainty with respect to...and obviously some regulations. We've seen the same thing elsewhere. I'm on the fisheries committee, and we know there are a number of consultations that are going to happen after this, and the fisheries minister is going to do some things on the regulatory side.

I'd like to ask some questions about testimony that we've already heard.

When we spoke to Mr. Gratton the other night, from the mining folks, he said:

> First of all, for mining projects we fully expect to have mines on the list that will follow in regulations, so we expect the same number of projects to be assessed in the future as have been up to now. In fact, we've even speculated that we might end up having more projects, as some brownfield sites, which are mines that are being developed on already disturbed mining areas, may fall under the new definitions. So we actually may see more projects assessed, but they will be assessed in a more timely manner.

I'm trying to reconcile that, because very clearly Mr. Gratton, and Mr. Prystay also, have read the legislation very thoroughly and they came up with that interpretation. I'd simply like to understand how I can square that circle.

Mr. Stephen Hazell: There are two things. One is that the legislation is very clear that the 99% of projects that are currently screened under CEAA will be not be happening. We know there will be a huge diminution of the number of projects assessed overall. So that I think is clear.

What isn't clear, and what I've been saying, is that we don't know what's going to be on the designated project list regulation. Maybe Pierre has some inside information that I don't have. I'm not sure this committee has seen any of this.

That's why I'm saying that this bill could be an empty shell, or maybe it won't be so bad, if Pierre is right, at least with respect to mining projects. We know there's going to be a huge reduction in the number of projects, but whether or not some of the key mines of Mining Association of Canada members will be subject to the act through the designated project regulation, I don't know.

Mr. Mike Allen: I will agree with you on the fact that we did hear it last night, too, from the environment commissioner that there's 95% of these that really have little or no impact, so we wouldn't see much of a change, but Mr. Gratton obviously sees mines as being something significant, that they're going to have to go through some kind of review. In fact, on questioning, Mr. Prystay was even responding to the question of whether he foresaw anything less rigorous, and he said:

> I don't anticipate any less scientific rigour in any of the reviews. The process is going to include both federal and provincial or territorial environmental assessment processes regardless, so we don't anticipate any reduction in the quality of the work....

So they weren't anticipating any reduction in the quality of work for any of the types of things they were trying to do. It's kind of one of those things where we're going yin and yang on this, and it seems to me that they're fully expecting a very rigorous process for their projects.

Mr. Stephen Hazell: Well, we're not going to get it through CEAA 2012. I mean, we know that in this bill there are a number of very profound changes from the previous bill—for example, just in the definition of what an environmental effect is.

For projects such as a mine.... Let's take a base metal mine in British Columbia that's subject mainly to provincial regulation and not so much to federal regulations, other than the Fisheries Act and some other federal provisions. If you look at that, what would a federal environmental assessment involve with respect to that base metal mine?

The assessment would be restricted to the comity of the environmental effects section in the bill, which is limited to studying impacts on fish, impacts on migratory birds, and other components of the environment to be specified in schedule 2. And guess what? There's nothing in schedule 2. There's nothing there at all. So it would be a very, very narrow environmental assessment if it were just the federal assessment of that mythical base metal mine in British Columbia.

That's just one example, but they've also taken out another set of factors in the current bill—for example, the need for the project and the alternatives to the project. They have been taken out. Those are extremely important parts of many environmental assessment laws in this country, and perhaps especially in the province of Ontario.

So there are a number of ways in which the assessments under CEAA 2012 will be very much weaker and more fragmented than is the case currently. Now—

● (2150)

The Chair: Thank you, Mr. Hazell.

Thank you, Mr. Allen.

Mr. Mike Allen: Am I out of time?

The Chair: Your time is up.

We'll now move to Mr. Nicholls.

Mr. Jamie Nicholls: Thank you, Mr. Chair.

Mr. Fisher, Mr. Thomas, and Mr. Anderson, for the sake of clarity, I'd like to clarify something. With all due respect, I studied sustainable landscape management at UBC. I made many visits to the valley and to Chilliwack and other valley towns. I studied in that environment, and I want to clarify the basic science of surface hydrology and the role of riparian corridors, because I've heard a lot about farmers' ditches for the past couple of months.

Ditches act as first-order streams, whether they're man-made or natural. First-order streams flow into second order and they flow into third order, and eventually they reach deltas at the ocean. If you look at a satellite picture of the Fraser delta, you'll see massive siltation at the outlet of the delta.

Now, people will ask, "So what?" Well, any runoff that goes into those ditches increases siltation in a river, and the silts reduce the oxygen in that river. The reduction of oxygen reduces the capacity of a river to carry aquatic life—plain and simple. That's the plain science of surface hydrology.

The Fisheries Act leads to the protection of those riparian corridors because it recognizes that surface runoff reduces a river's capacity to carry life and fish. Mitigation such as hedgerows—or gravels, as you mentioned—helps the process, but if you remove these acts and the incentive to protect fish, some farmers will cut costs, and they will not take on the extra costs to do the mitigation measures. So this act is actually protecting the whole system.

A farmer knows their land well. I wouldn't want to say they don't. But it's a system. They're part of a system. A lot of farmers want to use all of their cultivable land. It makes economic sense. You want to increase the productivity of your land, but by doing hedgerows and by taking mitigation measures, you're protecting fish, which protects that industry.

Now, that's science. It's not manipulation, such as the government is doing in using language and perceptions to turn people against science. So I'd just like that clarified.

My question is actually for Mr. Hazell. Changes in Bill C-38 mean that cabinet now can overrule the National Energy Board's decision. Do you think the decision-making should be based on science, or is allowing big resource developments to be decided on a political whim a good idea?

Mr. Stephen Hazell: I have a somewhat different view from others. I actually am not as troubled by these proposed changes.

The National Energy Board is a quasi-judicial body, and it does its work in a way that's fair to folks who come before it, I think. I don't like a lot of the decisions from the National Energy Board, but it is an independent body and it has a pretty good process. But at the end of the day, whether or not the Northern Gateway project is approved or not, I think ultimately that is a political decision. So I don't have a problem with the changes to the NEB legislation.

● (2155)

Mr. Jamie Nicholls: Do I have time for one brief question, Mr. Chair?

My question is for Mr. Thomas.

We know that mistakes made by industry for these big resource developments.... Say something goes wrong and there is an accident, a spill, and the habitat has to be rehabilitated once it's destroyed. Do you believe, such as our leader does, that the polluter should pay for ruining that, or should the taxpayer foot the bill for rehabilitation?

Mr. Gregory Thomas: We believe that the—

Mr. Jamie Nicholls: It's pretty simple. Is it the polluter who should pay or the taxpayer?

Mr. Gregory Thomas: We believe that those who cause the damage should be financially responsible for the damage that they cause. Yes, that's—

Mr. Jamie Nicholls: Thank you. That confirms our leader's and our party's position. Thank you very much, Mr. Thomas.

The Chair: Thank you very much.

We now move to Ms. Ambler, for five minutes, please.

Mrs. Stella Ambler: Thank you, Mr. Chair, and thank you to our panel for being here so late tonight.

My first question is for Mr. Thomas.

The Canadian Energy Research Institute has told us that the economic impact of the oil sands is approximately $2.1 trillion over 25 years. Would you say that delays in the environmental assessment process would affect that number, and in particular, Canadian taxpayers, and if so, how?

I'll end there and let you answer that one first.

Mr. Gregory Thomas: Yes, absolutely. I think it goes back to what I addressed in my submission, which is that Canada is doing a very bad job of getting relevant information in front of decision-makers about the effects on the environment, the cost to the environment, the cost to the economy, and the sensible ways by which we can address threats to the environment while at the same time providing necessary goods and services to people.

Mrs. Stella Ambler: "Quantifying the damage" is how you described it, I think.

Mr. Gregory Thomas: Exactly. How much oxygen is being removed from the Fraser River from the silt that flows down from farmers' fields, and how effective are the mitigation factors that are foisted on the people who've farmed the land for 100 years, as one example?

I thought Mr. Hazell's comment about saving Exxon a fortune because delaying the Mackenzie Valley pipeline 40 years got us to the point where natural gas is only worth $2 a gigajoule—

Mrs. Stella Ambler: It's a certain type of math, right?

Mr. Gregory Thomas: It was clever, but it actually missed the mark, because we missed many periods of $12 and $16 gigajoule gas that would have created apprenticeships for aboriginal people, that would have built a vital economy, and that would have built a self-sufficient northern Canada.

Ultimately, the environmental assessment—the moratorium that came out of the Berger commission was counterproductive, anti-scientific, and it essentially just served to strengthen the bargaining position of the aboriginal people for a big ownership stake in the Mackenzie Valley pipeline, which was what the whole debate was really about anyway. It wasn't about finding an environmentally sustainable way to build a pipeline, because they did, and that could have been done very quickly. Instead, we destroyed a northern economy and took ourselves out of the game, maybe for the next 50 years, and we used environmental assessment as a tool for other agendas.

I think that's what we don't want to do. In the end we deprived the government of billions of dollars of revenue that could have been used to protect the environment and build the lives and futures of the people of the north. It was a tremendous mistake, and a costly one for taxpayers.

● (2200)

Mrs. Stella Ambler: Well said. Thank you.

In a way, you've summarized why our finance minister talks about the importance of one project, one review. Even though environmental assessment is not at the top of his to-do list, he understands, like you, that it's all about jobs and it's all about economic growth. The bottom line is that duplications, delays, and all these types of impediments in the current process are affecting taxpayers and jobs in our country.

As a more general question, I want to address something one of the witnesses yesterday talked about, the BNA Act and the environment. I want to point out that the word "environment" doesn't appear in the BNA Act, but the courts have found subsequently that responsibility for the environment should be shared between federal and provincial governments.

Do you agree that federal, provincial, and territorial governments should share, not duplicate, responsibility for environmental assessments? Would you agree that Bill C-38, part 3, emphasizes sharing, and not the duplication of responsibility?

Mr. Gregory Thomas: Yes. We need to eliminate duplication and we need to set out the responsibility for different aspects of protecting the environment with a tremendous amount of precision. I don't think anyone would suggest that protection of our oceans should be the responsibility of provincial governments as opposed to federal governments. As we develop environmental protection, clearly delineating who's responsible for what is a tremendous service that leaders at both federal and provincial levels can provide us.

Mrs. Stella Ambler: Thank you very much.

The Chair: Thank you, Mr. Thomas.

Thank you, Ms. Ambler. We have to move on.

Mr. Toone, go ahead for five minutes, please.

M. Philip Toone: Thank you, Mr. Chair.

And thank you, witnesses, for staying at a fairly late hour. I appreciate that you're still here.

A pipeline has spilled about 22,000 barrels of oil into the Alberta muskeg. It's a pretty significant environmental disaster. It's certainly going to have an impact on streams and wildlife, and fisheries in particular. The way the Fisheries Act is being modified by this bill talks about "serious harm" and "permanent harm". I wonder if either Mr. Kneen or Mr. Hazell would like to speak.

This spill—presumably even one as large as this, one of the largest in North American history and one that is going to have an incredible impact—might very well be defined as "temporary" and not really subject to the provisions of the bill. Can we look forward to this kind of environmental disaster wreaking havoc on our fisheries with the way the act is going to be modified under Bill C-38?

Mr. Stephen Hazell: I share your concern about the changes to the Fisheries Act. It remains to be seen how these terms "serious harm" and "permanent harm" will be defined by the courts. That will take some time. Again, we're going to be faced with a fair amount of uncertainty as we go through that process.

The Fisheries Act we have right now is tried and tested as a piece of legislation, and it does protect fish habitat, through the HADD provisions. It's pretty clear what the scope of it is, and proponents have a pretty good idea of when they're in jeopardy of prosecution and when they're not.

In situations where there may be damage to fish habitat now, proponents will say, "Well, you know, we've got this new law; it's not so strict, maybe we can get away with this. Although we're destroying fish habitat, we're not actually killing fish, so we don't really need to worry." I would worry that it will be harder to protect.

● (2205)

Mr. Philip Toone: I think we're mortgaging our future with the current proposed changes. If I can just quote Jeffrey Hutchings—he's the former chair of the federal government committee on the status of endangered wildlife in Canada. In a recent letter to the Prime Minister, he asserts that the majority of freshwater fish, and up to 80% of 71 freshwater species at risk of extinction, will not be protected with the changes that are before us today. That, in my opinion, is a catastrophe. I don't think these fish will fall under the definition of commercial fish. I don't think they will fall under recreational fish. It's fairly unlikely they fall under aboriginal fisheries.

At the moment, in the Standing committee on Fisheries and Oceans we are looking at how ecosystems can change overnight. Over 10 years, the Great Lakes ecosystem has changed, where a fish that was considered inconsequential is now considered crucial to the food chain of the fish that are currently being harvested. Changes are happening very quickly, especially in the situation of climate change we have today. I don't think the changes being proposed are going to be able to adequately address that. I'm worried that biodiversity is going to be seriously affected. I always understood from childhood that the big fish eats the little fish. You protect all fish, because it's all part of one chain. This bill does not address that, not adequately in the least.

I'm wondering, would you be able to speak to biodiversity? How is that going to be protected, and should we even bother protecting biodiversity?

Mr. Stephen Hazell: Protection of biodiversity is an important part of assuring overall sustainability of ecosystems. Of course, it's tremendously important. It really is at risk of being lost with the changes to the bill, just because there is going to be much less federal presence in the environmental assessment process. That means there will be much less federal science done in association with environmental assessments. That's one thing that doesn't get talked about very much. Considerable science is generated through environmental assessments that are done federally. People work on these things. It facilitates studies—sometimes by proponents and sometimes by governments. It generates information that proves to be tremendously useful. For example, we know a lot more about the ecology of the Mackenzie Valley because of the work that has gone back to the Berger inquiry, and subsequently a lot of science has been developed. Environmental assessments really assist the scientific. It's mutually reinforcing with ecological science.

Mr. Philip Toone: If I may, then, Mr. Kneen, regarding the changes proposed here today, are we going to be in a position to adequately protect the environment against any mishaps that may happen regarding mining? I'm just wondering what should be addressed in Bill C-38 to adequately protect the environment when it comes to the inevitable accidents that are going to happen in mining?

The Chair: Very briefly, Mr. Kneen.

Mr. Philip Toone: In a nutshell.

Mr. Jamie Kneen: In a nutshell, we need a much more thorough environmental assessment process that is contemplated in this act in order to look at the kinds of contingencies, including economic contingencies—bankruptcies and abandonment of projects—that have caused such grief in the past.

The Chair: Thank you very much, Mr. Toone.

We now move on to Mr. Kamp for five minutes, please.

Mr. Randy Kamp: Thank you, Mr. Chair.

Thank you, gentlemen, for being with us here today.

Dr. Fisher, thank you for coming all the way from beautiful downtown Agassiz. That area used to be in the riding I represent. I know it's a beautiful area. I know as well that you are a research scientist emeritus with Agriculture Canada. My only disappointment is that you are still a Saskatchewan Roughriders supporter, which is a disappointment to me.

We got a lesson from Mr. Nicholls on physical geography, hydrology, and so on. You may want to respond to that. I know he didn't give you an opportunity.

In your presentation, if I heard it correctly, you said that 80% of the drainage costs of the district of Kent are due to direct and indirect costs—getting approvals, permits, and so on through the authorization process with DFO. I just wonder if you could give us a bit more information about how that process worked, and the frustrations, if you had any, in that process.

● (2210)

Mr. Lorne Fisher: In terms of the costs involved, we have had to hire a staff member specifically to get grants approved. When I became mayor in 2005, we weren't getting any drainage done. We weren't getting any gravel removed from the Fraser River because the municipality did not have the technical people to write the necessary grants to get it done, or the time to do it. We had to add staff members.

As I mentioned earlier, the fact is the soils have become less productive because we were not doing our job, and it is part of a municipality's job to ensure that the agricultural land is productive because it's part of the old ARDSA agreement from some time ago. All these things were costing money. The actual digging or cleaning of the ditches costs a lot more because it has to be done under the supervision of monitors, if there's any chance of disruption of fish habitat. These are the types of things that contribute to it.

I noticed that I wasn't asked about what my theories were for streams versus ditches. Ditches don't have headwaters. Ditches go dry. That's not what really worries the farmers. What worries the farmers more is 30-metre setbacks when they have relatively small, 20-, 30-, or even 10-acre fields. Agricultural land is extremely scarce in the Fraser Valley, which you must be aware of as well. The growing of trees for riparian areas takes up space and also cuts down productivity.

I've had many discussions about this. I certainly think that a well-grassed surface is far more effective in preventing the siltation you mentioned than the growing of trees, which shed more leaves and branches, etc. We could argue that point for a long time.

Mr. Randy Kamp: I raised this question with a previous panel. I read from the habitat policy that DFO presumably follows, written in 1986. It's been applied since then. There's just one line here that reads, “The policy applies to those habitats directly or indirectly supporting those fish stocks or populations that sustain commercial, recreational or Native fishing activities of benefit to Canadians.”

In your experience with DFO, has it appeared to you that they've followed this policy, or was it more indiscriminate, that every water everywhere that might have a fish in it was being protected? Are you in favour of refocusing, as we are in this bill, on these fisheries that matter to Canadians?

Mr. Lorne Fisher: Yes, that's been the problem. There's been a little variation in how DFO personnel interpret that language. Also, certain consultants interpret that language far more broadly than was initially meant. If these suggested changes can curb that somewhat, it would be appreciated. Right now there are people out there...there are some days in the Fraser Valley where it's all a stream, for one thing—we're all underwater—with the best of drainage.

I think the wording as it stands now has been interpreted much too broadly.

● (2215)

The Chair: Thank you, Mr. Fisher. Thank you, Mr. Kamp. That ends your time.

My understanding right now is that there's been discussion among the parties. Yesterday the analysts asked me for direction from the committee on the report. We're approaching the end of our witnesses today, and we have two hours slated tomorrow on the notice of meeting to discuss and consider the report we are tasked with sending back by a specific deadline. We have to allow a certain amount of time, not only to draft that report but also to give interpreters and so on enough time, for consideration to report our report back from the subcommittee.

I'm asking right now if we can use the last 10 to 12 minutes of our slated meeting time, which is supposed to end at 10:30, according to our notice of meeting. We've had a fairly thorough round of questioning of the witnesses. I'm looking for direction from the committee as to what we want to do. Should we proceed to some discussions so we can provide the analysts with some consideration and give me some direction on how we're going to proceed tomorrow with the consideration of the draft report?

Mr. Robert Chisholm: Mr. Chairman, I agree that time is tight. There is no question it's tight. I'd be happy to stay for five or ten minutes after.

But we have another five minutes. These good folks have a lot of experience and information to share, and we don't have much time left to hear from experts like these. I don't want to abuse their time by not taking advantage of it.

The Chair: I don't see consensus, but I'll go around and hear a couple of other comments.

Mr. Anderson.

Mr. David Anderson: If we stop now, even if we dismiss the witnesses, we're going to have less than 10 minutes to talk about this. I think Ms. Duncan wanted to speak about these issues. She feels strongly about this. I think we should move to a discussion and wrap up at the time that we concluded we were going to.

The Chair: Ms. Duncan.

Ms. Kirsty Duncan: Thank you, Mr. Chair.

We will have four days to discuss this section of the bill, and in fairness to the witnesses, I want to make sure we have an evidence-based report. We need a thorough discussion to provide direction on what the report is going to look like.

The Chair: I'm sensing from you, Ms. Duncan, that you would like to proceed to drafting instructions at this point.

Okay, I don't have consensus on this, so in order to change the notice of meeting, which is supposed to take us to the end of today, I would need a motion that the committee now moves to consideration of the drafting instructions for the analyst. Otherwise, I would have to give the time to Mr. Chisholm, who is next on the list.

Do I have a motion to that effect?

Mr. Robert Chisholm: Thank you, Mr. Chairman.

Mr. David Anderson: A motion...?

The Chair: Do you want to start? I need a motion to move to consideration—

Mr. Robert Chisholm: We had the discussion, and we weren't going to do that.

Mr. David Anderson: I move to discuss the report.

That's what we're suggesting.

The Chair: Okay.

Mr. Robert Chisholm: We're done with questioning.

The Chair: We're not done with questioning; actually we have five minutes.

I sought consensus, Mr. Chisholm. I heard your point, and I respect it. I believe what I heard from two of the other parties at the table is that they would like to change the agenda.

Mr. Robert Chisholm: It's by unanimous consent only.

The Chair: No, I don't need unanimous consent. I simply need a motion. I was looking for unanimous consent so I wouldn't need a motion, but if I do have an official motion, and I believe I heard one from Mr. Anderson, we could discuss the report.

I don't see anybody else who wishes to speak to this. I'll simply call the question.

Mr. Robert Chisholm: Mr. Chairman, if we're going to move in this direction and Shanghai the rest of the meeting, let's have a recorded vote and see what happens.

The Chair: Very well.

Mr. Robert Chisholm: I think it's absolutely ridiculous. We have these witnesses here. We have five minutes. The opposition has five minutes, and you're taking that five minutes away. I think that's an abuse of committee privilege, frankly.

● (2220)

The Chair: I don't think I'm doing anything. I'm simply here....

Mr. Robert Chisholm: You asked for 30 seconds. You tried to beg people—

The Chair: Mr. Chisholm, you called for a recorded vote. I'll respect that.

Mr. Toone.

Mr. Philip Toone: I'm just wondering, if we want a fact-based report, shouldn't we...? We're here to get facts.

The Chair: I understand that. I'm not disputing your opinion. I'm simply trying to get some direction. I have some rules—

Mr. Philip Toone: But the direction was the agenda that was before us today.

The Chair: Mr. Toone, I understand that, but I was also approached by members of the committee and the analysts. In order to give them some drafting instructions, I would need either unanimous consent of the committee to extend the sitting hours, which I don't think I'm going to have, or I would need a motion right now. Otherwise, we simply proceed with a line of questioning and provide no direction to the analyst. This is for you guys to decide. This isn't my decision. I'm your humble servant as the chair of the committee.

I've heard a motion; there's a motion on the table. I have a call for a recorded vote, which is completely within order.

Mr. Philip Toone: Mr. Kamp just finished an intervention. I think it's only fair that we now get one on this side. I don't think there's any reason to skip this. We've respectfully listened to Mr. Kamp's intervention.

The Chair: I've heard that consideration.

Mr. Philip Toone: I think it's time to have our kick at the can.

Mr. Jamie Nicholls: We've been going back and forth about this for six minutes now. If we had just gone forward with our last questioner, we would have had the 10 minutes that you mentioned until 10:30. Unfortunately, that won't happen, because of these games that are being played.

The Chair: Ms. Duncan, let's use this time efficiently.

Ms. Kirsty Duncan: I want to be clear: I do not play games. I tried to go to all parties to get consensus. This is important because the whole point of this process is to get a report. I do not want it based on talking points or ideology. I want it based on what we heard, and recommendations drawn from there. I think that's going to require a good discussion. If it occurs at 10:30, I'm afraid it will get rushed through in two minutes, and it's far too important for that.

The Chair: In the interests of time, let's get to it so we can have a decision one way or the other.

Mr. Clerk, we have a motion and a request for a recorded vote, that the committee now move to drafting instructions—

Mr. Robert Chisholm: Excuse me, Mr. Chairman. Who did the motion come from? I didn't hear it.

The Chair: Mr. Anderson.

(Motion agreed to [See *Minutes of Proceedings*])

The Chair: I would like to thank Mr. Fisher, Mr. Hazell, Mr. Kneen, and Mr. Thomas for appearing at such a late hour before our committee. I know your interventions are very much appreciated by the members.

Right now we'll suspend for a moment, and then we'll move to the drafting instructions for the analysts.

● _____ (Pause) _____ ●

● (2225)

The Chair: Colleagues, thank you so much. I appreciate that that was a difficult discussion, but we have a few minutes now to give some drafting instructions to the analysts. I'm prepared to entertain a speaking list.

Ms. Duncan, followed by Mr. Chisholm.

Ms. Kirsty Duncan: Thank you, Mr. Chair.

I want to be really clear in my remarks. We've been given 16 hours to review this, a section of the bill, and in Minister Siddon's words, we can't erode 144 years of history.

Environmental assessment is about getting data, analyzing data, and making evidence-based decisions. Surely this has to be an evidence-based process or it will be seen as a failure, and this process is being very carefully watched. The report should include testimony or evidence, and real recommendations should be drawn from that testimony. If this process is not followed, we will no doubt have a report that's based on ideology or mere talking points. The reality is that this has to be given the time it needs. People will be able to read the testimony. They can compare the testimony to what could look like talking points.

If time is of an issue.... I know there is a deadline, but this committee does control its destiny. We need to take the time. We need to get it right. I don't want to just submit my ideas, and I would hope that all sides would not want to just submit their ideas, but that we would have a real report, we would draw recommendations from the testimony, and we'd take the time to do it right.

The way this is going, my guess is we will probably need a dissenting report, so I want to ask for that up front.

Thank you.

The Chair: Thank you, Ms. Duncan.

I would hope we could reach some form of consensus on at least as much as we can. It's going to be a difficult thing to do, given the timelines we have.

Thank you very much for that.

Mr. Chisholm.

Mr. Robert Chisholm: Mr. Chairman, I hope the analysts, as they normally do, would be able to provide us with a summary of the testimony, including all witnesses. I would hope there wouldn't be any witnesses excluded. And yes, we may end up with dissenting reports.

I think we should be clear that we will spend about 14 hours on a bill that makes significant changes to 70 pieces of legislation. I don't think we can forget what we're actually about here, and those are the parameters the government has put around this.

We've heard from witnesses. They've come out and have given their testimony, and we need to make sure we reflect that in the report. At the very least, it's important to accurately reflect that, and then I guess it will be up to members of the committee to decide the weight that is given to what witnesses. Maybe we could have a bit of that discussion tomorrow.

It's going to be very difficult, no question—I agree with you—to be able to do that in the time given. The consequences of passing this bill are significant, but it's clear what the government has in mind, and they are the majority, regardless of what the impact is.

That is my two cents' worth.

● (2230)

The Chair: Thank you very much, Mr. Chisholm.

Ms. Rempel.

Ms. Michelle Rempel: I'll give my time to Mr. Anderson, if he so desires.

The Chair: There is nobody else on the list, so we can simply move to Mr. Anderson.

Mr. David Anderson: I think we're moving in a reasonable direction. I think we have to make sure we're bringing our own material with us when we come here tomorrow night. Clearly everyone is going to have it. You're talking dissenting reports; you're talking report. We need to come prepared with our material.

I don't know how fair it is to the analysts to tell them now that they need to include every witness in the summary of everything that's happened here. We need to take some responsibility for making sure the things we think are important are included, and that we bring them a full content tomorrow, realizing there is going to be some additional information in the first two hours.

I think we can start to move in the direction of summarizing with an outline form, or as best as possible, and then bring our own material and make sure we're prepared with our own content.

I guess I should point out as well that it doesn't amend 70 acts; it amends 10 acts, and several of them in very small ways.

The Chair: Thank you, Mr. Anderson.

Mr. Chisholm, do you have some more points to make?

Mr. Robert Chisholm: Sorry, I thought Ms. Rempel was on the list.

The Chair: No, I moved to Mr. Anderson.

Mr. Robert Chisholm: Okay. I just want to say that we've got until 5 o'clock on Monday.

The Chair: We are obligated to have a report. My understanding is that we have to have that report back to the finance committee in both official languages, so there is some complication on that.

If we start with that mandate and work our way back, I think it would be.... If we're not going to meet Friday, and I don't think we are, I think we should have an expectation, as a committee, to come out of our final four hours tomorrow with as much progress as we can agree on.

From my perspective, and I mentioned this briefly yesterday, too —I mentioned it to Ms. Leslie, who from my understanding is the lead from your particular party, and I spoke with Ms. Duncan and Mr. Anderson—given the testimony we've already heard to date, I think each party has their position clearly defined on what they would like to see in the report.

I would suggest that we get that to the analysts as early as possible, even tomorrow, even though we're going to hear a couple of more hours of testimony tomorrow. If we have enough information that we can get to the analysts first thing tomorrow morning—and I suggest that information go directly to the analysts —they could have some semblance of a draft that we could at least have a look at. We could add whatever things we think are salient from tomorrow's two hours of testimony and have at least a modicum of a starting point so we could discuss either key recommendations or salient issues we would like to see in the report.

It would be my hope, as chair, that we could find as much common ground as possible. I'm also a realist. I don't think there's going to be common ground on all fronts, and I would expect then that we would have discussions about whether or not we would have a dissenting report.

Does that answer your question, Mr. Chisholm?

Mr. Robert Chisholm: Well, it does in part. I appreciate very much what you said, Mr. Chairman, about the logistics and the time pressures and so on, but we also have time pressures.

The Chair: I understand that.

Mr. Robert Chisholm: There are time pressures with respect to Canadians who are concerned about what this bill might do to the environment and to the fisheries.

One of the things that came up tonight was the whole question of the designated projects list, the fact that it's not available and how significant that is. It was recommended to us that we not sign off on this until we get some clarity on the designated projects list.

Mr. Chairman, I'd like to ask that we invite the ministers back before the committee—they appeared here Friday morning, I believe, and unfortunately I missed them—to entertain our questions and perhaps respond on at least the whole question of the designated projects list.

There are many other things that we need to talk with the ministers about, as we heard, but I think we should take seriously the recommendation that we were given tonight: it would be reckless, beyond reckless, if we were to proceed and pass this through without getting some idea of what's on that designated list.

So I'd like to ask that we call the ministers. I don't know when that would happen, whether that would be Friday or Monday. We can do a good bit of the report. This has happened before. We can do a good chunk of the report.

We need to hear from the ministers on at least that whole question of the designated project list.

● (2235)

The Chair: Thank you, Mr. Chisholm. I can't speak to that. I would defer that to parliamentary secretaries on the other side.

The next speaker on the list is Ms. Duncan. If she will graciously oblige me—

Ms. Kirsty Duncan: Of course.

The Chair: —I will ask the parliamentary secretaries to give a response to your question immediately.

Mr. Anderson, Ms. Rempel, Mr. Kamp, do we have any idea about the availability of ministers, as per the request by Mr. Chisholm?

Mr. David Anderson: Mr. Chair, if the committee asks, we can take the request forward, but we've set our time and agenda for meetings. That's already been established. Tomorrow we were planning on coming to the end of that, so I don't see any reason why we would change that.

It's unfortunate that Mr. Chisholm wasn't here when the ministers were here. The rest of us were able to hear them.

Just in terms of that designated project list and some of the other things we've heard tonight, throughout our testimony we've heard that clearly there will be regulations that will be developed. They'll be developed in a public process, and that will be part of the process of following up on the legislation once it's passed.

Certainly we've heard the witnesses tonight. We'll pass the legislation and then we'll develop the regulations. They will be done in public, in the process that they always are. There will certainly be an opportunity for everyone to participate at that point as well.

The Chair: Okay.

I think we've heard a response to your question. I'm not hearing that the ministers are able to come in the timeframe that we have left, as our schedule—

Mr. Robert Chisholm: The ministers have said publicly that they would be happy to come back to the committee if asked. They were challenged about the fact that they were here on a surprise...you know, that maybe people on the committee weren't prepared. When they went outside and were questioned on it, the ministers said that if asked by the committee, they would be happy to come back.

We were quite happy to change the agenda for tonight's meeting. I know it was just a few minutes, but we can do it.

This is so important. I mean, this is so important. As I've said right from the beginning, the government has a majority. The government will have its way. But good Lord, we're talking about a pretty serious matter here, and we've heard from some experts who have suggested to us that, at the very least, let's get some clarification on the designated projects list.

I don't think that's too much to ask.

The Chair: Thank you, Mr. Chisholm.

Ms. Duncan.

Ms. Kirsty Duncan: Thank you, Mr. Chair.

I don't really have an answer yet: when is this report due? Monday at what time? Let's start there—please.

The Chair: Ms. Duncan, I believe all members have access to the...I have it here. As per our initial meeting at the subcommittee, our terms of reference were defined by the finance committee in their second report to the House. It reads:

> A. Pursuant to Standing Orders 108(1)(a) and 108(1)(b), a Subcommittee on Bill C-38 (Jobs, Growth and Long-term Prosperity Act) be established to examine the clauses contained in Part 3 (Responsible Resource Development) of the Bill, provided that

I will skip the requirements that are not pertinent here, but it has parts (i), (ii), (iii), (iv), and then it goes to item (v):

> (v) the subcommittee finish its examination no later than 5:30 p.m. on Monday, June 4, 2012, and report its findings to the Standing Committee on Finance at the next available opportunity, provided that if the subcommittee has not reported by that time, it shall be deemed to have reported a recommendation that the clauses contained in Part 3 of Bill C-38 be carried.

So that implies that if we do not, through our deliberations as a subcommittee, have the ability to meet this deadline, it's going to be automatically deemed accepted in its current form.

● (2240)

Ms. Kirsty Duncan: That was my point. So it's Monday at 5:30. Is that correct?

The Chair: That's correct, but let me also clarify that this means we have to give the staff here adequate time to have that report in both official languages. So we need to work backwards in a way that's reasonable from that. We can't finish our deliberations at 5:25 on Monday, June 4, and expect to be able to submit a report—

Ms. Kirsty Duncan: Nor would I.

The Chair: I'm not saying that, but I need some direction from you, as committee members, as to what that would be.

Ms. Kirsty Duncan: Okay, I'd like to put forth an idea.

My concern was that this was going to go long, and at some point the discussion would get cut off. That was my concern earlier. We have until 5:30, and I really want this to be based, like any other report, on testimony. I think we need to meet Monday. It can be drafted in both official languages. If we need to make small changes, we can.

Alternatively, let's have a real report. This was about oversight. We don't need talking points. We don't need ideology. Let's look at the gaps—we've heard what they are—and do a report based on the gaps, based on the things that are missing, based on the things that have been suggested as improvements.

The Chair: Thank you, Ms. Duncan.

I have a list, so now it's Mr. Anderson, followed by Mr. Allen, followed by Mr. Chisholm.

Mr. David Anderson: I'm okay. I'll come back in later.

The Chair: Okay.

Mr. Allen.

Mr. Mike Allen: Thank you very much, Mr. Chair.

I appreciate what you're saying. I just want to mention a couple of things. We have to be careful about the translation, too, because we've had a certain history in the natural resources committee. Not too long ago we had some issues with translation of a report, and we had some wrinkles to iron out. So we want to leave ourselves time for that.

The other thing is that the finance committee, I believe, starts its actual clause-by-clause examination on Monday. The way this works, if it's not reported back complete, and they hit these clauses, it's deemed reported and that's done. I don't believe we have the time to push it right up against the back end. I think considering the translation we have to do, tomorrow night is better. We need to get it done. Otherwise we might miss the opportunity to even get anything in.

The Chair: Mr. Chisholm.

Mr. Robert Chisholm: How about this? How about we invite the ministers in tomorrow night? We have two hours set aside to have a discussion about the report. We've given some direction already, or we've had some discussion over the direction, in terms of the summary and including the witnesses and that kind of stuff. So what if we take the time and hear from the ministers? Then if the analysts need further time, we would be prepared to convene for a short period on Friday morning.

The Chair: I've heard two proposals, one from Mr. Chisholm and one from Ms. Duncan. We do have a defined work schedule that we voted on, and I can't do this.... I would need a specific timeframe to be put forward in the form of a motion. I'll give you a minute to think about that if you choose to, and then we would have to make a determination on that. I can't do this without authority from the committee.

Mr. Kamp.

Mr. Randy Kamp: I'm not sure I have much more to contribute, other than to say that if it is—and it is the fact—a fact that the finance committee has to complete clause-by-clause by Tuesday at 11:59 or it will be deemed done in short order, backing up, I think we have to have some kind of report finished by tomorrow night. At least that's the way it looks to me.

Now, who do we have scheduled for tomorrow at this point? Mr. Chisholm is talking about substituting witnesses already scheduled for the ministers.

● (2245)

Mr. Robert Chisholm: I'll be happy to put it in a motion, Mr. Chairman, that in the two hours that we have scheduled tomorrow night for deliberation over the report, we invite the ministers, and we schedule them to come in during that two-hour section.

I'll put this in parentheses. We've already given the analysts some degree.... I'm just continuing with the motion and—

The Chair: Mr. Chisholm, can you give me one second? I do have a speakers' list after Mr. Kamp. I allowed you to speak. If you're going to have a motion....

Mr. Robert Chisholm: [*Inaudible—Editor*]

The Chair: I appreciate that. I understand, but I have to follow the process here. I thought you were seeking—

Mr. Robert Chisholm: I guess that's what I was trying to do, to be clear—

The Chair: I thought you were just trying to clarify that, but if you're going to move a motion, then I'll put you on the speakers' list.

I believe next I have Mr. Anderson.

Mr. David Anderson: Mr. Chair, we need to stick to our original schedule. If you start looking at what we've been assigned to do, we need to have this report done. If there are any amendments, they need to be in 48 hours prior to clause-by-clause, which means it needs to be done Thursday night. Those amendments also need to be in both official languages, if there are any.

We don't have time, and I actually think it's probably extremely impractical to expect that the ministers will be here on 20 hours' notice. They're typically gone on Fridays. I don't think they're going to be around anyway.

If you want to make the proposal or not, I will make a proposal that we stay with our original schedule, which is that we hear witnesses as scheduled for the first two hours; we begin to work on our report tomorrow night in those second two hours; and we try to get that done as quickly as possible so we can get it to the clerks for translation. It hopefully will be done, on our behalf, on Thursday night, passed to them so they can get it translated and get it to the committee.

The Chair: Thank you, Mr. Anderson.

I believe the default or the status quo is what you're proposing. I don't think I need a motion to maintain the status quo; I would only need a motion to entertain moving something different from the status quo.

Mr. Chisholm.

Mr. Robert Chisholm: Thank you, Mr. Chairman.

I will make a motion. I'll preface it by saying this. I appreciate the fact that we have a tight timeline here, but I don't think I need to remind anybody here about the gravity of the situation.

The ministers have offered publicly, if invited, to come and visit the committee. If we have votes tomorrow night, which we may well have, the ministers will be in their seats. The question of availability should not be a problem.

Given that, and given the fact that we heard tonight the recommendation that, at the very least, we consider the designated project list before we move forward with this bill, I would move that we invite the ministers to come before this committee in the second section of our time slot set aside tomorrow night for deliberation of the bill. The analysts have been given some direction already. If they require additional information, then we agree that either early Friday morning, or Thursday night, if they need it, before we leave, we can provide it to them then. They can start tomorrow, frankly. I don't mean to suggest that it's as easy as that.

Anyway, in essence that's my motion, Mr. Chairman.

The Chair: Do we have an understanding that we have a motion on the floor?

Ms. Duncan, you had your hand up to speak, but because we've now got a motion on the floor, did you want to speak to the motion currently on the floor, or did you want to resume your discussion after the disposition of that motion?

Ms. Kirsty Duncan: I can speak to the motion because I think it's a very good motion. I'm wondering if I can do a friendly amendment. Instead of being pedantic and say we're only going to have four hours on Thursday...I've done committee meetings where we had to get the report done and we sat for five and a half hours because we wanted it right. Perhaps we aren't going to end at 10:30 on Thursday. We take the time that's required. That would be my friendly amendment.

The Chair: I appreciate that, but I do have a motion from Mr. Chisholm. My understanding of the motion is that we use tomorrow night to invite the Ministers of Fisheries and Oceans, Environment Canada, and Natural Resources to testify in the first two hours—

● (2250)

Mr. Robert Chisholm: The second two. We've got the first two scheduled for witnesses. So it would be the second two hours. It would be from 8:30 to 10:30.

The Chair: Okay. That motion would make a lot more sense to me if it also included the time that we were going to have...then if it's going to be accepted, you're displacing the consideration of the draft report.

Mr. Robert Chisholm: I guess what I said in my—

The Chair: Let's just deal with this, and then if we need to, we can deal with that.

Does anybody want to speak to this motion?

Mr. David Anderson: Mr. Chair, we're going to oppose this motion. We had an agreement earlier as to how we're going to conduct ourselves, how we're going to see this through to the end. We have a reasonably good plan, and probably the only one that's going to be able to get it done in time.

Ministers are also typically gone on Thursday night and Friday. So I don't know if Mr. Chisholm is serious or playing games here, but that's okay, we'll vote on the motion. We will be opposing it.

We want to stick to our original plan, which was agreed. I think it was actually unanimous, when we agreed to it, that we move ahead and begin to hear and discuss the report in the second two hours tomorrow night, and get that done as quickly as possible so that we can get it back to the committee and we can have our influence on what the committee is deciding.

The Chair: Thank you, Mr. Anderson.

Ms. Duncan, on the motion. I can't accept a friendly amendment. Are you actually going to move it?

Ms. Kirsty Duncan: Yes, we had the same, that there would need to be an extension of the time after. That was my point. I will be supporting this motion.

The Chair: Mr. Chisholm.

Mr. Robert Chisholm: I'd just like to clarify that it's been said a couple of times that we had an agreement on the time limit. My understanding, from talking with others who were in the room, was that before there was any agreement reached on Friday, the meeting was adjourned.

The Chair: We can dispute the facts. We have a work plan that we've been working quite well under. We've been calling witnesses. We've been having excellent rounds of testimony. We have a valid motion before the floor, Mr. Chisholm, and I suggest we get on with it.

I don't know if anybody else needs to speak to it.

Ms. Rempel.

Ms. Michelle Rempel: Section (v) of the motion that created this subcommittee from Finance reads:

> (v) the subcommittee finish its examination no later than 5:30 p.m. on Monday, June 4, 2012, and report its findings to the Standing Committee on Finance at the next available opportunity, provided that if the subcommittee has not reported by that time, it shall be deemed to have reported a recommendation that the clauses contained in Part 3 of Bill C-38 be carried.

I just want to put it out there to my colleagues opposite because the opportunity to have dissenting reports has been brought up. So I think it's my duty, having this knowledge, to bring this up. We need to have enough time, and enough time was scheduled in the original motion in order to get that review done, to be courteous to the analyst and to get translation done.

I think the best course of action here, in order to ensure all information is presented, is to stick with the work plan that's already been scheduled, because I think my colleagues opposite would not, through procedure, be happy with that scenario.

Mr. Robert Chisholm: Mr. Chairman, if I may—

The Chair: Okay, I'll put you on the list. Ms. Duncan had her hand up.

Ms. Kirsty Duncan: Thank you, Mr. Chair.

I have just one point. I understand the timelines. I think we all do. We also, as parliamentarians, have a role of oversight. We've heard very clearly where there are gaps that people can't answer. We've heard very clear recommendations, and I think it's incumbent upon us to follow up with the ministers. They need to provide answers. Some of the things we've been asking for four weeks we still have no answers on. So I really think this is an important issue.

As I said, you can have the ministers and then do several hours after that on the report. It's been done before.

The Chair: Oh my.

Mr. Chisholm, quickly, please.

Mr. Robert Chisholm: Mr. Chairman, let me respond to the threat from Ms. Rempel. In response to this motion she suggested that we may end up passing the timeline that has been set by the government, and this will end up being passed without any amendment. If that's not a threat, I don't know what is.

I understand the timeline that has been set, and I don't agree with it one iota. That's been made really clear. All I'm trying to do, within the time that has already been set, is respond to expert evidence we've been provided to hear from the ministers, at the very least. They've offered publicly. If invited by the committee, they will come.

We have a chunk of two hours tomorrow night when we can entertain the ministers. I'll be awfully surprised if they're not in town, because we have a very busy legislative agenda right now. Let's call them in. This is important. You want to get it done and they want to get it done, so let's do what it takes to get it done. We'll do it tomorrow night and the analysts will have the weekend—basically the same time that was allocated by the government—to get this ready for the end of Monday. We'll be done. Heaven forbid we'll even go a little further in our due diligence.

● (2255)

The Chair: Thank you.

Ms. Rempel.

Ms. Michelle Rempel: I'm fine, thank you.

The Chair: Seeing no other speakers, we will vote on the motion.

Mr. Robert Chisholm: I'd like a recorded vote please, Mr. Chairman.

(Motion negatived: nays 6; yeas 5)

The Chair: Colleagues, we're now 40 minutes into this discussion and we're right back where we started. That motion has been defeated.

This was supposed to give drafting instructions to the clerk. It has now become a discussion about scheduling committee business. I would appreciate it if members could get back to the original intent of the question. The motion that moved us out of our regular meeting was to discuss drafting instructions.

Ms. Rempel is next, followed by Mr. Anderson.

Ms. Michelle Rempel: Given that we have agreed through this motion to carry on with the timeline put forward, I move to adjourn.

The Chair: I have a motion to adjourn. It's not debatable.

(Motion agreed to on division)

The Chair: The meeting is adjourned.

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